NO. [illegible]

TRANSCRIPT OF RECORD

FILED
AUG 23 1957
JOHN T. FEY, Clerk

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,385

WILL PARKS CLAY and MATTIE BELL ANDERSON,

Appellants;

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(ORIGINAL RECORD RECEIVED JAN. 30/57.)
U. S. COURT OF APPEALS
FILED

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, MACON DIVISION.

Criminal No. 7258.

WILL PARKS CLAY and MATTIE BELL ANDERSON,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appearances:

Jacobs & Gautier, Attorneys at Law, Persons Bldg., Macon, Ga. T. Reese Watkins, Attorney at law, Persons Bldg., Macon, Ga. Paul M. Conaway, Attorney at law, Washington Block, Macon, Ga. Attorneys for Appellants.

Mr. Frank O. Evans, U. S. Attorney, Mr. Robert B. Thompson, Assistant United States Attorney, Post Office Building, Macon, Ga.

APPEAL from the District Court of the United States for the Middle District of Georgia, Macon Division, to the United States Court of Appeals for the Fifth Circuit, returnable at the City of New Orleans, Louisiana.

In the District Court of the United States for the Middle District of Georgia, Macon Division.

United States of America,
vs.
Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs Clara Willis Cravey.

Criminal No. 7258.

(Violation: 18 USC 371 in Connection With violation of Occupational and Wagering Tax Statutes; 26 USC 7201).

Count One.

The Grand Jury Charges:

From on or about the 1st day of July, 1954, and continuously thereafter up to and including the 30th day of June, 1955, withnn the Macon Division of the United States District Court for the Middle District of Georgia and elsewhere within the jurisdiction of this Court, Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs. Clara Willis Cravey, hereinafter referred to as the defendants, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate ang agree together and with each other, and with Obie Durham, who is named herein as a co-conspirator but not as a defendant, and with divers other persons to the Grand Jurors unknown, to commit offenses against the United States, to-wit:

To engage in the business of conducting a lottery for profit, commonly known and called "Numbers" and "Bug", and of accepting wagers and to knowingly, wilfully and feloniously attempt to evade and defeat the payment of

the Wagering Occupational Tax prescribed for such business and required to be paid by them during and for the taxable period ending June 30, 1955, in accordance with the provisions of Section 3290 of the Internal Revenue ode of 1939, as amended, formerly 26 USC 3290, and Section 4441 of the Internal Revenue Code of 1954, 26 USC 4411, and while engaged in such business, as aforesaid, to knowingly, wilfully and feloniously attempt to evade and defeat the payment of the Federal Excise Tax imposed on Wagers and required to be paid for the month of July, 1954, and for each month thereafter, in accordance with the provisions of Section 3285 of the Internal Revenue Code of 1939, as amended, formerly 26 USC 3285, and Section 4401 of the Internal Revenue Code of 1954; 26 USC 4401; all of which acts are in violation of Section 2707(c) of the Internal Revenue Code of 1939, as amended, formerly 26 USC 2707(c), and Section 7201 of the Internal Revenue Code of 1954, 26 USC 7201.

The Grand Jury further presents that the defendants and the co-conspirators herein referred to, in furtherance of said conspiracy and in order to effect the objective thereof, did, at the times and places hereinafter stated, commit the following overt acts, to-wit:

Overt Act 1.

On or about July 1, 1954, the exact date being unknown to the Grand Jury, Will Parks Clay and Mattie Bell Anderson inspected the premises at 140 Morton Avenue, Athens, Clarke County, Georgia.

Overt Act 2.

On or about July 23, 1954, Mrs. Clara Willis Cravey, for the consideration of $10,500.00, purchased by warranty

deed that tract or parcel of land, together with all improvements thereon, known as 140 Morton Avenue, Athens, Clarke County, Georgia.

Overt Act 3.

In the late fall of 1954, the exact date being unknown to the Grand Jury, in the Macon Division of the Middle District of Georgia, Will Parks Clay operated a lottery "pick-up" station at 126 College Street, Macon, Bibb County, Georgia.

Overt Act 4.

On or about February 17, 1955, at Macon, Bibb County, Georgia, within the Macon Division of the Middle District of Georgia, Mrs. Mary C. Cotton purchased a 1955 Model Oldsmobile automobile.

Overt Act 5.

From on or about March 1, 1955, to July 12, 1955, Mrs. Mary C. Cotton and Alvin Q. Cotton furnished Will Parks Clay with a room and a telephone in their personal residence at 3644 West Napier Avenue, Macon, Georgia.

Overt Act 6.

In the month of March, 1955, the exact date being unknown to the Grand Jury, Will Parks Clay and Mattie Bell Anderson acquired 10 cases of lottery-writer books, containing a total of 2,500 such books, more or less, at Athens, Clarke County, Georgia.

Overt Act 7.

On June 8, 1955, Obie Durham, driving a 1946 Plymouth automobile, picked up a sack of lottery tickets at a restaurant on Emery Highway, in Macon, Bibb County, Georgia.

Overt Act 8.

On June 9, 1955, Will Parks Clay, drove a 1955 Model Oldsmobile automobile from Macon, Bibb County, Georgia, to Athens, Clarke County, Georgia, at a high rate of speed.

Over Act 9.

On June 21, 1955, Will Parks Clay transported to 140 Morton Avenue, Athens, Clarke County, Georgia, in a 1955 Model Oldsmobile automobile, a paper sack containing original lottery tickets.

Overt Act 10.

On June 21, 1955, Will Parks Clay and Mattie Bell Anderson had in their possession in Athens, Clarke County, Georgia, two (2) Remington Rand printing calculating machines, two (2) pair of binoculars, in excess of ten (10) full cases of lottery-writer books, a large quantity of money wrappers and bags and eleven (11) rolls of adding machine tape.

Overt Act 11.

On June 28, 1955, Obie Durham, in Macon, Bibb County, Georgia, in the Macon Division of the Middle District

of Georgia, had in his possession a large number of original lottery tickets.

Count Two.

That heretofore, on or about July 1, 1954. and continuously thereafter to and including June 30, 1955, Will Parks Clay, in the Macon Division of the Middle District of Georgia, and within the jurisdiction of this Court, then engaged in the business of conducting a lottery for profit, commonly known and called "Numbers" and "Bug", and of accepting wagers, did knowingly, wilfully, and feloniously attempt to evade and defeat the payment of the wagering occupational tax prescribed for such business and required to be paid by him during and for such period aforesaid, in accordance with the provisions of Sections 4401, 4402, 4404, 4421 and 4411 of the Internal Revenue Code of the United States, (IRC of 1954), contrary to the form of the Statute in such case made and provided (26 USC 7201) and against the peace and dignity of the United States of America.

Count Three.

That heretofore, during the month of June, 1955, Will Parks Clay, in the Macon Division of the Middle District of Georgia, and within the jurisdiction of this Court, then engaged in the business of conducting a lottery for profit, commonly known and called "Numbers" and "Bug", and of accepting wagers, during which month he received in wagers in the conduct of such lottery and wagering business the sum of Sixteen Thousand One Hundred Twenty-three and 80/100 ($16,123:80) Dollars did knowingly, wilfully, and feloniously attempt to evade and defeat the payment of the excise tax on such wagers in the

sum of One Thousand Six Hundred Twelve and 38/100 ($1,612.38) Dollars imposed thereupon, as prescribed therefor, and required to be paid by him on or before July 31, 1955, in accordance with the provisions of Section 4401 of the Internal Revenue Code of the United States, (IRC of 1954), contrary to the form of the statute in such case made and provided (26 USC 7201) and against the peace and dignity of the United States of America.

A True Bill

(S.) CECIL F. HALL,
Foreman, Grand Jury.

(S.) ROBERT B. THOMPSON,
Assistant United States Attorney.

Filed Feb. 16, 1956.

No. 7258 United States Dictrict Court, Middle District of Georgia, Macon Division. The United States of America vs. Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs. Clara Willis Cravey. Indictment Violation. 18 USC 371 in connection with violation of occupational and wagering Tax Statutes; 26 USC 7201. A true bill, Cecil F. Hall Foreman. Filed in open Court this 16 day of Feb., A. D. 1956. Betty M. Jones, Deputy Clerk. Bail, $.....

PLEA.

I, Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton, Mrs. Clara Willis Cravey, having been advised of my Constitutional rights, and having had

the charges herein stated to me, plead Not Guilty. In Open Court, this 16th day of April, 1956.

JACOBS & GAUTIER,
T. REESE WATKINS,
PAUL M. CONAWAY,
Attorneys for the Defendants.

At the direction of the Court, We the Jury, find the Defendant Alvin Q. Cotton not Guilty this the 19th day of Oct. 1956.

HOLDEN C. WEST,
Foreman.

VERDICT.

We, the jury find the defendants, Will Parks Clay, Mattie Bell Anderson and Mrs. Mary C. Cotton Guilty as to Count One and Will Parks Clay Guilty as to Counts Two & Three, this 19th day of October, 1956.

HOLDEN C. WEST,
Foreman.

JUDGMENT AND COMMITMENT.

United States District Court for the

United States of America,
vs. No. 7258.
Will Parks Clay

On this 26th day of October, 1956 came the attorney for the government and the defendant appeared in person and By Counsel;

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of 18 USC 371 in connection with 26 USC 7201; and 26 USC 7201, Conspiracy to violate Occupational and Wagering Tax Statutes; and accepting wagers without paying taxes thereon as charged in Counts 1, 2, and 3. and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four Years, or until he is otherwise discharged as provided by law, upon each count, those four years sentences to run concurrently; and also that the defendant pay a fine to the United States in the sum of $4,000.00 on each count, those fines not to be concurrent, therefore making a total of $12,000.00.

It is Adjudged that

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualfied officer and that the copy serve as the commitment of the defendant, at Macon, Georgia.

W. A. BOOTLE,
United States District Judge.

JUDGMENT AND COMMITMENT.

United States District Court for the

United States of America

vs. No. 7258.

Mattie Bell Anderson

On this 26 day of October, 1956 came the attorney for the government and the defendant appeared in person and By Counsel;

It Is Adjudged that the defendant has been convicted upon her plea of Not Guilty and a verdict of Guilty of the offense of 18 USC 371 in connection with 26 USC 7201—Conspiracy to violate occupations and wagering tax statutes, as charged in Count One and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eighteen (18) Months, or until she is otherwise discharged as provided by law.

It Is Adjudged that

It Is Ordered that the Clerk deliver a certified copy of this judgment and committment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant, at Macon, Georgia.

W. A. BOOTLE,
United States District Judge.

SEARCH WARRANT.

District Court of the United States, Middle District of Georgia, Macon Division.

Commissioner's Docket No. 2.
Case No. 532.

United States of America,

vs.

Premises know as 140 Morton Avenue, Athens Georgia.

To William A. Pair, Special Agent, Intelligence Division, Internal Revenue Service, or any other lawfully constituted Internal Revenue Agent:

Affidavit having been made before me by William A. Pair, William A. Morris and Richard E. Lewis, and an affidavit having been made by F. G. duBignon, that he (has reason to believe) that (on the premises known as) 140 Morton Avenue, Athens, Georgia, Athens Division in the Middle District of Georgia, (here describe property) there is now being concealed certain property, namely books, records, papers, documents and memorandum relating to the business of accepting wagers by a person, or persons, liable for the payment of the special tax provided for and imposed by Sections 4411 and 4412a, IRC of 1954, which has not been paid, all in violation of Section 7203, IRC of 1954, (here give alleged grounds for search and seizure) and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving this warrant and making the search (in the daytime) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 21st day of June, 1955.

WALTER F. DOYLE,
U. S. Commissioner.

Return.

I received the attached search warrant June 21, 1955, and have executed it as follows:

On June 21, 1955 at 2:45 o'clock P.M., I searched (the premises) described in the warrant and .....

I left a copy of the warrant with (name of person or owner or "at the place of serach") together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Ten (10) Full Boxes lotfery writer books.

One (1) No. 50 size bag of miscellaneous coin & currency paper wrappers.

One (1) partial box containing (52) Fifty-two lottery writer books.

One (1) Remington Rand Printing Calculator No. 96-692068.

One (1) Remington Rand Printing Calculator No. 96-693028.

One Black Note book—4" x 6".

One Black ledger book—4" x 6".

One (1) Black ledger book—8" x 14".

One (1) Bundle of Miscellaneous coin and currency wrappers.

One (1) Box containing eleven rolls of Adding Machine tape.

Fifteen (15) Sales books.

Two (2) lottery record books.

Three (3) check books on National Bank of Athens.

One (1) deposit book on National Bank of Athens.

One (1) Pair (7x50) Binoculars.

One (1) Pair (10x50) Sans & Streiffe Binoculars.

One (1) Strong box containing miscellaneous insurance policies and Notes receivable and two bundles of money as follows:

a One Bundle containing Ninety-five (95) twenty dollar bills and eleven (11) One hundred bills.

b One Bundle containing Fifty (50) twenty dollar bills.

Eleven (11) cloth money bags.

Three (3) cloth money bags.

This inventory was made in the presence of Special Agent Richard E. Lewis and.....

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

WILLIAM A. PAIR.

Subcrribed and sworn to and returned before me this ..... day of ....., 19.....

.....

United States Commissioner.

AFFIDAVIT FOR SEARCH WARRANT.

District Court of the United States, Middle District of Georgia, Macon Division.

Commissioner's Docket No. 2.
Case No. 532.

United States of America,

vs.

Premises known as 140 Morton Avenue, Athens, Georgia.

Before (Name of Commissioner) Walter F. Doyle, (Address of Commissioner) Macon, Georgia.

The undersigned being duly sworn deposes and says:

That he (has reason to believe) that (on the premises known as) 140 Morton Ave., Athens, Georgia, Athen

Division, in the Middle District of Georgia, there is now being concealed certain property, namely, (here describe property) books, records, papers, documents and memorandum relating to the business of accepting wagers by a person or persons, (here give alleged grounds for search and seizure) liable for the payment of the special tax provided for and imposed by Sections 4411 and 4412a, IRC of 1954, which has not been paid, all in violation of Section 7203, IRC of 1954.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

See Attached Affidavits.

.....,
Signature of Affiant.

.....,
Official Title, if any.

Sworn to before me, and subscribed in my presence, June 21st, 1955.

(Seal) WALTER F. DOYLE,
United States Commissioner.

Copy.

United States of America,
Northern District of Georgia, ss.

I, Fleming G. du Bignon, first being duly sworn, upon my oath depose and say:

That I am a special agent of the Internal Revenue Service.

That I have personally checked the records of the District Director of Internal Revenue, Atlanta, Georgia, and that Will Parks Clay, has not purchased an occupational tax stamp from the District Director as required by Section 3291(a), Internal Revenue Code of the 1939 Code, and in violation of Section 7203, Internal Revenue Code of the 1954 Code, prior to accepting wagers for himself or on behalf of others. The District Director's records further show that there has been no occupational tax stamp purchased in any alias used by Will Parks Clay, such as Will Parks, M. B. Anderson, Parks Clay, etc.

That I have also carefully searched the District Director's records and have found no occupational tax stamp purchased in the name of any person known to me and employed by Will Parks Clay.

That the records of the District Director, Atlanta, Georgia, fail to disclose the purchase of any occupational tax stamp by any person residing in Clarke County, Georgia.

(S.) FLEMING G. du BIGNON,
(Fleming G. du Bignon).

Subscribed and sworn to before me at Atlanta, this 20th day of June, 1955, in the office of Intelligence Division.

JAMES M. SUTHERLAND,
Special Agent.

Copy.

State of Georgia,
Bibb County.

The undersigned, being duly sworn, deposes and says:

On June 15, 1955, at 2:41 P.M., Will Parks Clay drove into the driveway of the premises known as 140 Morton

Avenue, Athens, Georgia, in a 1955 Black Oldsmobile 98 automobile, the same having a spotlight on left side and no license plates; that at said time, Will Parks Clay got out of said car and took from the rear seat thereof a wicker basket approximately 18" x 9" x 6" and carried said basket into the aforementioned premises; that on June 16, 1955, at 2:28 P.M., Will Parks Clay arrived at said premises in the same automobile and got out of said car and removed from the rear seat thereof and carried in his hand into the aforementioned premises a newspaper and a brown paper bag folded over at the top, the said paper bag being of the type and size commonly used by lottery operators in carrying lottery paraphernalia; that on June 17, 1955, Will Parks Clay arrived at the aforementioned premises in the same automobile at 2:44 P.M. and got out of the car and removed from the rear seat thereof a paper bag and carried same into the house at the above address, the said paper bag being of the type and size commonly used by lottery operators in carrying lottery paraphernalia; that the said Will Parks Clay is a person known to have a reputation for engaging in the business of accepting wagers for profit.

Will Parks Clay whom I know, has been identified to me by a neighbor of the above premises as being a "Mr. Anderson".

(Signed) RICHARD E. LEWIS,
Special Agent, Intelligence
Division Int. Rev. Service.

Sworn to before me and subscribed in my presence: 21 day of June, 1955.

WALTER F. DOYLE,
U. S. Commissioner.

Copy.

State of Georgia,
County of Bibb.

The undersigned, being duly sworn, deposes and says:

On June 6, 1955, I searched the record of the Director of Internal Revenue, Atlanta District, and found that Will Parks Clay had not obtained on that day or on any day prior thereto, a special occupational tax stamp for the fiscal year ending June 30, 1955, no person using the last name of Anderson had obtained a special occupational tax stamp for the fiscal year ending June 30, 1955.

On June 20, 1955, I personally checked the records of long distance telephone calls made from the telephone at the premises know as 140 Morton Avenue, Athens, Georgia, and I observed from said records that within the past six months long distance telephone calls have been made from said telephone to known lottery operators and persons having reputations as being engaged in the lottery business.

(Signed) WILLIAM A. MORRIS,
Special Agent, Intelligence Div.,
Internal Revenue Service.

Sworn to before me and subscribed in my presence, this 21 day of June, 1955.

WALTER F. DOYLE,
U. S. Commissioner.

Copy.

State of Georgia,
County of Bibb.

The undersigned, being duly sworn, deposes and says:

On or about June 6, 1955, I was informed by a confidential adviser of known reliability, whose information

in the past has been verified, that Will Parks Clay was engaged in the lottery business and that Will Parks Clay was checking up his lottery operations at a place in a northeasterly direction from Bibb County, Georgia; That if the house of Mattie Bell Anderson could be located, that such was the place of Will Parks Clay's checking up operations: That I, through investigation consisting of trailing Will Parks Clay's automobile at speeds sometimes exceeding 100 miles per hour, discovered such location to be in the vicinity of Athens, Georgia; that from further investigation in Athens, Georgia, I learned from a confidential informant of known reliability that Mattie Bell Anderson occupied the premises known as 140 Morton Avenue, Athens, Georgia; that on June 9, 1955, he observed a black 1955 Oldsmobile 98 with no license plates, parked in the driveway of the aforementioned premises and that the said automobile was similar to the one Will Parks Clay was seen driving on a number of occasions.

That I observed personally from telephone company records that the telephone for the above-described premises was listed in the name of one Clara Willis, who, I have information to believe, is the mother of Mattie Bell Anderson.

That on June 7, 14, 15, 16 and 17 of the year 1955, Will Parks Clay on each date changed automobiles at a service station on Napier Avenue, Macon, Georgia, and on each of said dates, Will Parks Clay got out of a 1941 Buick automobile and into the 1955 black Oldsmobile 98 automobile hereinbefore mentioned.

I have personally arrested Will Parks Clay on 2 occasions and on both occasions he has had on his person lottery paraphernalia.

(Signed) WILLIAM A. PAIR,
Special Agent, Intelligence Div.,
IRS.

Sworn to and subscribed before me, this 21 day of June, 1955.

(S.) WALTER F. DOYLE,
U. S. Commissioner.

MOTION FOR RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE, PURSUANT TO RULE 41(e) FEDERAL RULES OF CRIMINAL PROCEDURE.

(Title Omitted.)

I.

Will Parks Clay moves this Court to direct that a certain brown paper bag and its contents; one paper tablet approximately 8½ x 11 in size; $287.78 in lawful currency and coin of the United States, and seven checks totaling $319.35, all of which property is owned by the petitioner, and which, on June 21, 1955, at a point on Morton Avenue in the City of Athens, Clarke County, Georgia, in the Athens Division of the Middle District of Georgia, was unlawfully seized and taken from his person and possession by Richard E. Lewis, William A. Pair and William A. Morris, then Special Agents, Intelligence Division, Bureau of Internal Revenue, United States Treasury Department, be returned to him, and that said property be suppressed as evidence against him in any criminal proceeding.

Petitioner further states that the property herein referred to was seized against his will and without a search warrant or warrant for his arrest.

II.

Petitioner further moves this Court to direct that certain property, of which he is the owner, a schedule of which is annexed hereto and marked Schedule A, and which on the 21st day of June, 1955, at his residence then known as 140 Morton Avenue, Athens, Clarke County, Georgia, in the Athens Division of the Middle District of Georgia, was unlawfully seized and taken from him by Richard E. Lewis, William A. Pair and William A. Morris, then Special Agents, Intelligence Division, Bureau of Internal Revenue, United States Treasury Department, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

Petitioner further states his residence was searched by the above named officers upon the purported authority contained in a certain search warrant issued by Walter F. Doyle, United States Commissioner, Middle District of Georgia, Macon Division, on June 21, 1955, upon affidavits made therefor by Fleming G. duBignon, Special Agent, Revenue Service, on June 20, 1955, and by Richard E. Lewis, William A. Morris and William A. Pair, Special Agents, Intelligence Division, Internal Revenue Service, on June 21, 1955. Petitioner shows:

1. That said warrant is insufficient on its face.

2. The property seized is not that described in said warrant.

3. There was no probable cause for believing the existence of the grounds on which the warrant was issued.

4. The grounds stated in the affidavits, upon which issuance of the warrant was based are not sufficient to

show probable cause justifying the issuance of said warrant.

5. The warrant was illegally executed and no proper return of the property seized by said officers were made by them as required by law.

6. The property was seized against the will of petitioner.

7. The officers who executed said warrant were without authority to do so.

8. The affidavits on which the warrant was based are as a matter of law insufficient to authorize the issuance of the warrant.

T. A. JACOBS,
(T. A. Jacobs).

P. O. Address:
Persons Building,
Macon, Ga.

JACK J. GAUTIER,
(Jack J. Gautier).

P. O. Address:
Persons Building,
Macon, Ga.

T. REESE WATKINS,
(T. Reese Watkins).

P. O. Address:
Persons Building,
Macon, Ga.

PAUL M. CONAWAY,
(Paul M. Conaway).

P. O. Address:
Washington Block,
Macon, Ga.

Filed Apr. 14, 1956.

Schedule A.

10 Full boxes so-called lottery writer books.

1 No. 50 size bag of miscellaneous coin and currency paper wrappers.

1 Partial box, containing 52 so-called lottery writer books.

1 Remington Rand printing calculator No. 96-692068.

1 Remington Rand printing calculator No. 96-693028.

1 Black Notebook 4" x 6".

1 Black Ledger book 4" x 6".

1 Black Ledger book 8" x 14".

1 Bundle of miscellaneous coin and currency wrappers.

1 Box containing 11 rolls of adding machine tape.

15 Sales books.

2 so-called lottery record books.

3 Check books on National Bank of Athens.

1 Deposit book on National Bank of Athens.

1 Pair (7 x 50) Binolux binoculars.

1 Pair (10 x 50) Sans and Streiffe binoculars.

11 Cloth money bags.

3 Cloth money bags.

ORDER.

The within motion for return of seized property and for the suppression of evidence having been read and considered, the same having come on for hearing, upon consideration of the evidence and argument of Counsel, It is hereby Ordered that the same is overruled. This 19th day of April, 1956.

W. A. BOOTLE,
U. S. Judge.

Filed April 19, 1956.

MOTION FOR RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE, PURSUANT TO RULE 41(e) FEDERAL RULES OF CRIMINAL PROCEDURE.

(Title Omitted.)

Mattie Bell Anderson moves this Court to direct that certain property of which she is the owner and had possession of, a schedule of which is annexed hereto and marked Schedule A, and which on the 21st day of June, 1955, at her residence then known as 140 Morton Avenue, Athens, Clarke County, Georgia, in the Athens Division of the Middle District of Georgia, was unlawfully seized and

taken from her by Richard E. Lewis, William A. Pair, and William A. Morris, then Special Agents, Intelligence Division, Bureau of Internal Revenue, United States Treasury Department, be returned to her and that it be suppressed as evidence against her in any criminal proceeding.

Petitioner further states her residence was searched by the above named officers upon the purported authority contained in a certain search warrant issued by Walter F. Doyle, United States Commissioner, Middle District of Georgia, Macon Division, on June 21, 1955, upon affidavits made therefor by Fleming G. duBignon, Special Agent, Internal Revenue Service, on June 20, 1955, and by Richard E. Lewis, William A. Morris and William A. Pair, Special Agents, Intelligence Division, Internal Revenue Service, on June 21, 1955. Petitioner shows:

1. That said warrant is insufficient on its face.

2. The property seized is not that described in said warrant.

3. There was no probable cause for beleiving the existence of the grounds on which the warrant was issued.

4. The grounds stated in the affidavits, upon which issuance of the warrant was based are not sufficient to show probable cause justifying the issuance of said warrant.

5. The warrant was illegally executed and no proper return of the property seized by said officers were made by them as required by law.

6. The property was seized against the will of petitioner.

7. The officers who executed said warrant were without authority to do so.

8. The affidavits on which the warrant was based are as a matter of law insufficient to authorize the issuance of the warrant.

T. A. JACOBS,
(T. A. Jacobs).

P. O. Address:
Persons Building,
Macon, Georgia.

JACK J. GAUTIER,
(Jack J. Gautier).

P. O. Address:
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T. REESE WATKINS,
(T. Reese Watkins).

P. O. Address:
Persons Building,
Macon, Georgia.

PAUL M. CONAWAY,
(Paul M. Conaway).

P. O. Address:
Washington Block,
Macon, Georgia.

Filed Apr. 14, 1956.

Schedule A.

10 Full boxes so-called lottery writer books.

1 No. 50 size bag of miscellaneous coin and currency paper wrappers.

1 Partial box, containing 52 so-called lottery writer books.

1 Remington Rand printing calculator No. 96-692068.

1 Remington Rand printing calculator No. 96-693028.

1 Black Notebook 4" x 6".

1 Black Ledger book 4" x 6".

1 Black Ledger book 8" x 14".

1 Bundle of miscellaneous coin and currency wrappers.

1 Box containing 11 rolls of adding machine tape.

15 Sales books.

2 so-called lottery record books.

3 Check books on National Bank of Athens.

1 Deposit book on National Bank of Athens.

1 Pair (7 x 50) Binolux binoculars.

1 Pair (10 x 50) Sans and Streiffe binoculars.

11 Cloth money bags.

3 Cloth money bags.

1 Strong box containing miscellaneous insurance policies and notes receivable and 2 bundles of money as follows:

(a) 1 Bundle containing 95 twenty dollar bills, and 11 one hundred dollar bills.

(b) 1 Bundle containing 50 twenty dollar bills.

ORDER.

The within motion for return of seized property and for the suppression of evidence having been read and considered, the same having come on for hearing, upon consideration of the evidence and argument of Counsel, It is hereby Ordered that the same is overruled. This 19th day of April, 1956.

W. A. BOOTLE,
U. S. Judge.

Filed April 19, 1956.

(5:00 p.m., April 17, 1956.)

Mr. Watkins:

May it please the Court, there are two motions before the Court at this time, both filed on the 14th day of April, one by the defendant Will Parks Clay and one by defendant Mattie Bell Anderson, and with Your Honor's permission I suppose we shall go ahead and hear both motions at the same time.

By the Court:

I think so. Are there any objections from the Government.

Mr. Thompson:

We may encounter some difficulty, Your Honor, but in the interest of time the Government would have no objections.

(Discussion.)

By The Court:

Well, let's try to hear them together.

WILL PARKS CLAY, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Watkins:

Q. Mr. Clay, do you recall the occasion on June 21, 1955 in Athens, Georgia, when certain federal officers arrested you?

A. Yes, sir.

Q. Will you tell the Court in your own words just what happened at the time you were arrested?

A. I drove up in the yard where I live there and got out of the car.

Q. Now is that 140 Morton Avenue in Athens?

A. Yes, sir.

Q. Were you living at that house at that time?

A. Yes, sir.

Q. Was that your residence?

A. Yes, sir.

Q. Now what time of day was it that the officers arrested you?

A. I think it was somewhere about 1:30 in the afternoon.

Q. Go ahead from there then and tell the Court just what happened.

A. I drove up in the yard and got out of the car and started in the house and I looked around and seen a man about 10 or 12 feet behind me with a pistol in his hand coming toward me, and I broke and run in the house. When I got up on the porch he caught me.

Q. Did he catch you now before you got into the house?

A. Yes, sir. He snatched a sack out from under my arms and he looked at it and said, "Yeah, this is what I want. You are under arrest."

Q. What kind of a sack was that?

A. A paper sack.

Q. Was it a brown paper sack?

A. Yes, sir.

Q. How many officers were present?

A. I hadn't seen but one then. When I seen him coming toward me with a pistol I didn't know who it was and it kind of excited me. After he snatched the sack out from under my arm there was three, two more there.

Q. How far were you from your automobile at the time the officers stopped you with the pistol?

A. I was about 13 or 14, maybe 15 steps. I drove right up almost to the front porch, right even with the front porch, and went up the steps on the porch and that's where they stopped me.

Q. Now was that paper sack approximately how large?

A. It was about that high and about that square when it was opened. (Indicating with hands.)

Q. Was that the type of sack that is commonly used by merchants in putting groceries and things that people buy in?

A. Yes, sir.

Q. Was there anything written on the outside of the sack?

A. No, sir.

Q. Was the top of the sack closed?

A. Yes. sir.

Q. Could you see in the sack?

A. Not until he opened it.

Q. And how did you have it on your person?

A. It was under my arm.

Q. Did you have anything else in your hand?

A. No, sir.

Q. And there was nothing on the outside of the sack?

A. No, sir. The sack was closed up and folded up and then rolled up under my arm.

Q. Did the officers tell you you were under arrest?

A. After they tried to get in the house and Mrs. Anderson wouldn't open the door, then they turned around and told me I was under arrest, and turned around and grabbed the door and jerked it open.

Q. Was the door latched?

A. Yes.

Q. Was it a screen door or just a front door?

A. A screen door, yes, sir.

Q. Was all this at the front door of the house?

A. Yes, sir.

Q. Did either officer, any one or all of them ever tell you that they had any warrant to arrest you?

A. No, sir.

Q. Did you ask them whether they had any warrant?

A. I asked Mr. Pair. He said they didn't need one.

Q. Did you agree for them to take that sack away from you?

A. No, sir. They snatched it before I had a chance to say anything.

Q. Well, were you willing for them to stop you and take it?

A. No, sir.

Q. Did you make any agreement with them or consent for them to search your automobile?

A. No, sir, they didn't ask me.

Q. Did they search your car?

A. Yes, sir.

Q. Was that after they took the sack away from you?

A. Yes, sir.

Q. Did they find anything in the car other than that paper tablet which is about 8½ by 11 inches in size?

A. I think there was a sack in there with some pennies in it.

Q. And that tablet?

A. Yes, sir.

Q. Did they take the tablet and the pennies?

A. Yes, sir.

By the Court:

Where were the tablet and the pennies, Mr. Watkins?

Mr. Watkins:

In the car, Judge.

Q. Where was the tablet? In the car?

A. Laying on the front seat.

Q. Where were the pennies?

A. Laying on the front seat.

Q. Were they in any container?

A. Yes, sir.

Q. What were they in?

A. In a cloth bag tied up.

Q. Did you know any officers were following you, or waiting for you?

A. No, sir.

Q. Before this officer came there?

A. No, sir.

Q. After this arrest did you learn that Officer Lewis and Pair and Morris were the ones who had arrested you?

A. Yes, sir.

Q. Did you know Mr. Pair before that?

A. Yes, sir.

Q. Which one of the officers had actually come up to you and stopped you with a pistol?

A. Lewis, the small one.

Q. The small one?

A. Yes, sir.

Q. Did they identify themselves to you as officers of the Government?

A. Wasn't anything said about who they were, but after I recognized Mr. Pair, well, I figured that was who they were. However, they neved did tell me who they were.

Q. You knew Mr. Pair?

A. Yes, sir.

Q. And you knew he was a Federal Officer?

A. Yes, sir.

Q. Did you know Mr. Lewis?

A. No, sir.

Q. Or Mr. Morris?

A. No, sir, never seen 'em.

Q. You say Morris is the one that took the sack away from you, or Lewis?

A. Mr. Lewis.

Q. Did he advise you that he was a federal officer before he did that?

A. No, he didn't say anything about who he was.

Q. Did he say he wanted to search you?

A. No, sir.

Q. Now, you had some money on your person, didn't you?

A. Yes, sir.

Q. Where was that?

A. In my pocket.

Q. Did they search your person?

A. Yes, sir.

Q. These three officers?

A. Yes, sir.

Q. Did they—I believe it was about $287.78 in all, including the pennies. Where did you have your bills, your paper money?

A. In my pocket.

Q. You remember which officer took that from you?

A. Mr. Pair.

Q. They gave you a receipt for your money, I believe?

A. Yes, sir. And about two or three hundred dollars worth of checks.

Q. I was going to ask you now about $319.35 worth of checks. Did you have any amount of checks like that on your person?

A. Yes, sir.

Q. Did they take those?

A. Yes, sir.

Q. Have you ever had them returned to you?

A. No, sir.

Q. Where did you have them on your person?

A. In my pocket.

Q. Which pocket?

A. Same pocket I had my money in.

Q. Hip pocket or—

A. Side pocket. The checks—the money and checks was all rolled up together, with the money around them.

Q. In your pants pocket?

A. Yes, sir.

Q. Now, I believe you stated to start with that this house at 140 Morton Avenue was your home at that time?

A. Yes, sir.

Q. Were you present when the officers entered your home there?

A. Yes, sir.

Q. Did you go in with them, after they broke in, I mean?

A. Mr. Pair jerked the door open and run in the house and one of them was behind me and he pushed me in the house and came on in there, and one of the others had done been around and kicked the back door and he was coming thru the hall. The screen on the back opened on the inside of the house and the screen on the front on the inside of the house.

Q. They exhibit any search warrant for the house?

A. After they got thru searching they took one out and laid it over on the television set and I looked at it and told Mr. Pair, I said, "that's not a search warrant." He said, "Well, we are going to use it for one." He said, "We, don't need one anyway." I said, "Who is the warrant against? There' no name on it." He said, "We don't need no name."

Q. Well, on the return on the search warrant there appears a listing of the things that were taken from the house and I will read them out to you: "Ten full boxes lottery writer books." You remember any ten boxes full of any kind of books?

A. Yes, sir.

Q. Were they in the house?

A. Yes, sir.

Q. Were they blank books?

A. Yes, sir, they had never been opened. The cases never had been opened.

Mr. Watkins.

Is that evidence in your possession, Mr. Doyle?

Mr. Walter Doyle:

Around there in the office, yes, sir.

Mr. Watkins:

Your Honor, I guess all that evidence ought to be brought in Court because I think we will have to exhibit to Your Honor at least some of it.

Mr. Doyle:

I don't know whether this particular evidence is or not. I'll go see.

Mr. Watkins:

I don't know that we have to have it right at this moment, but I think it ought to be available during the hearing.

Mr. Thompson:

If we are going to want it over here tonight I would like to know so I can send for it.

By the Court:

Do you need it, Mr. Watkins?

Mr. Watkins:

Well, if it is available and can be produced we don't need it right now. Just so it is available.

Q. "One No. 50 size paper bag containing miscellaneous coin and currency." You remember the paper wrappers?

A. Yes, sir.

Q. "One box containing 52" what they describe as "lottery writer books". Now was there a box containing 52 books of any type?

A. I don't remember any of them being opened except the ones they opened while they were there.

Q. Well, I'm not talking about open, just blank books is what I'm talking about, what it seems to be described here?

A. That must have been the grocery book tickets.

Q. And "One Remington Rand printing calculator, serial No. 96-692068".

A. Two of those.

Q. Yeah, another Remington Rand calculator, No. 96-693028.

A. Yes, sir.

Q. Both of those?

A. Yes, sir.

Q. "One black notebook 4 x 6 inches"?

A. Yes, sir.

Q. "One black ledger 4 x 6 inches"?

A. Yes, sir.

Q. "One black ledger 8 x 14 inches"?

A. Yes, sir.

Q. "One bundle of coin and currency wrappers"?

A. Yes, sir.

Q. "One box containing 11 rolls of adding machine tape"?

A. Yes, sir.

Q. "Two", what they refer to as "lottery record books". You remember any two record books?

A. Wasn't any books there that I had been keeping any lottery records on.

Q. Any books with any kind of records on them?

A. There was one there where I had been keeping my income tax, money that—didn't have but a few entries in it, one for $6,000 and I don't remember what the others were. I had been told by Mr. McElmore to keep a record of everything I took in, and that was it, so I could make my returns.

Q. "Three check books on the National Bank of Athens"?

A. That belonged to Mrs. Anderson's mother.

Q. That was there in the house?

A. Yes, sir.

Q. "One deposit book on the National Bank of Athens"?

A. I don't know as I ever seen that but I'm satisfied it was there because—

Q. Two pairs of binoculars?

A. Yes, sir.

Q. Now there was a strong box containing some insurance policies and notes receivable and two bundles of money totaling about $4,000? Now was there?

A. Yes, sir.

Q. Were you present when the officers took it?

A. No, sir. They had me in the front room.

Q. But it was there?

A. Yes, sir.

Q. Now was that yours?

A. No, sir.

Q. That strong box and the contents?

A. It was not mine.

Q. Whose was that?

A. It belonged to Mrs. Anderson's mother.

Q. One bundle of 11 cloth money bags and another lot of three cloth money bags?

A. Yes, sir.

Mr. Watkins:

I think we will have to have the documents here in order to clear up one item, Your Honor.

By the Court:

All right. What you are reading is not exactly what is on this original here.

Mr. Watkins:

Your Honor, they gave me a copy and I—

By the Court:

Well, you may look at this. Do you see anything about money bags there?

(Discussion at the Judge's desk.)

Q. Is it true there were a total of 14 money bags?

A. I didn't get a chance to count them but I'm satisfied there were that many there.

Q. Did you ever consent for these officers to search your home there?

A. No, sir.

Q. Did Mrs. Anderson consent for them to?

A. No, sir.

Q. Was the property described your property and in the house when the officers got it?

A. Yes, sir.

Q. Other than the strong box containing the money, some money and any insurance policies and notes receivable?

A. Yes, sir.

Cross Examination.

By Mr. Thompson:

Q. Mr. Clay, how long had you resided at 140 Morton Avenue in Athens, Ga., on June 21, 1955?

A. I think it was September, or maybe October, that we moved over there.

Q. What year?

A. 1954.

Q. You say "we", now who moved there in Sept. or Oct. 1954?

A. Miss Anderson and her mother had moved over there six or seven or eight weeks before that. It was six or eight weeks after they moved there that I moved.

Q. Mrs. Anderson and her mother were then living in the house?

A. Yes, sir.

Q. They were both residing there at the time this search took place?

A. Yes, sir.

Q. In June, 1955?

A. Yes, sir.

Q. How long had you been living there?

A. Since about September or October of 1954.

Q. That was your personal residence?

A. Yes, sir

Q. You had a right to go anywhere in that house you wanted to?

A. Yes, sir.

Q. Mr. Clay when you were there at that residence was that residence under your personal control?

A. Sure it was. It was my home.

Q. That was your home, the whole of it?

A. Yes, sir.

Q. You had a right to go in the kitchen if you wanted to?

A. I did go in there, yes, sir.

Q. In the bed rooms?

A. Yes, sir.

Q. Dining room?

A. Yes, sir.

Q. Every room in the house?

A. Yes, sir.

Q. Every room in the house was under your custody and control?

A. Yes, sir.

Q. And that was from the time you moved there until June of 1955. Is that correct, sir?

A. Yes, sir.

Q. Mr. Clay, this search that took place, of your person, just exactly where did it take place?

A. On the front porch.

Q. The search took place at 140 Morton Avenue on the front porch?

A. Yes, sir.

Q. Mr. Clay, at the time the search began was the screen door locked or unlocked?

A. Locked.

Q. Was the front door closed or open?

A. When I first went up on the porch I think it was closed. While they was fooling with me out there Mrs. Anderson got up and came to the door and opened the main door.

Q. Did she open the screen?

A. No, sir.

Q. If you had not been interfered with, Mr. Clay, would you have had a right to go into the house?

A. Yes, sir.

Q. Now how soon after you arrived at the house did the automobile containing the officers arrive?

A. I never did see an automobile. I never did see any of them until I got in about four or five steps of the steps. I looked around and one of them was four or five steps behind me and had a pistol in his hand.

Q. Was he pointing a pistol at you?

A. Yes, sir. He didn't say anything but I broke and went up the steps, was going to try to get in the house, but he overtook me and grabbed the sack out from under my arm and unrolled it and opened it up and looked in there and said, "Yeah, this is all I want." By that time one of the others had come up there and there was another one, I learned later, that was around behind the house.

Q. You don't know how they arrived at your residence?

A. No, sir.

Q. Don't know whether they came in an automobile or not?

A. Well, I don't guess they walked from Macon over there, if that's what you mean. Might have come on the train.

Q. You don't know how they actually got from wherever they were immediately before you saw them until the time you saw them?

A. I don't know how they got there.

Q. Did all of this search take place on the front porch? Did they go in all of your pockets on the front porch, find your money there on the front porch?

A. No, sir.

Q. Where did that take place?

A. They searched me on the front porch, just feeling of me. Felt down my pants leg and took my hat off and looked under it and then they—when Pair snatched the screen open he went into the house and the one behind me pushed me on in there with him. About that time the other one—I heard a kicking and rattling back there.

I think he kicked the screen door, the door on the back, open inward, the screen door, and he was coming up the hall and then they searched me then.

Q. They searched you again just as soon as they got in the house, before they serached the house?

A. I think it was all going on about the same time. They was all over the house.

Q. When was the first time you saw Mr. Pair?

A. When he run around me and snatched the door open.

Q. That's the first time you saw him?

A. Yes, sir.

Q. Prior to that who had you seen?

A. I didn't see nobody but Mr. Lewis.

Q. He's the only one you saw?

A. Up until Mr. Pair run around behind me.

Q. Do you know where Mr. Pair ran from?

A. No, sir, I sure don't.

Q. You couldn't tell from the direction in which he was running?

A. No, sir.

Q. With relation to where you parked your car, where were you at the time you first saw an officer, or knew of the presence of the officers?

A. I was about half way between the door of the car that I had just gotten out of and the front door.

Q. Which side of the car did you get out of?

A. Left.

Q. The driver's side?

A. Yes.

Q. From under the steering wheel?

A. Yes.

Q. Did you go around the front of the car or the back of the car?

A. Front.

Q. Went around the front of the car?

A. Got out and went around that way and cross in front of the car, and a step or two in front of the car I heard a noise behind me and I looked behind me and there was Mr. Lewis with his pistol pointing right towards me.

Q. He was pointing his pistol toward you?

A. Yes, sir, I broke out and run.

Q. You weren't afraid of the pistol?

A. I certainly was.

Q. You ran from it?

A. Sure I run from it.

Q. Was that the first time you had ever seen Mr. Lewis?

A. Yes, sir.

Q. You didn't know him prior to that day?

A. If I'd ever seen him before I don't know it.

Q. Altogether how many officers were there on that occasion?

A. I didn't see but three.

Q. Can you name them?

A. One of them was named Lewis and the other one Pair. I don't know what the other one's name was.

Q. The third one, is he the one that came in the back door?

A. Yes, sir.

Q. How soon after you were stopped on the front porch did someone tell you that you were under arrest?

A. That was after we got in the house.

Q. They didn't tell you you were under arrest until you got inside of the house?

A. No, sir.

Q. When did you first consider yourself under arrest, Mr. Clay?

A. Well, me and Mr. Pair there had some words. He began to tell me all about he was tickled to death to catch me and he would stay up all night and do without dinner and everything to catch me, that he didn't like the remarks I had been making about the way my money had been handled.

Q. You know what he had reference to, Mr. Clay?

A. Yes, sir. They took about $7,000.00 off of me, and the biggest part of it went unaccounted for.

Q. When was that?

A. In the last three years.

Q. What were those occasions?

A. Took nineteen hundred and ninety eight—

Mr. Watkins:

We object to that, Your Honor, as being irrelevant and immaterial in the questions raised by these motions.

By the Court:

Wouldn't that be going pretty far afield?

Mr. Thompson:

What I was attempting to develop was that Mr. Clay was pretty well familiar with the officers, Your Honor.

Mr. Watkins:

It wouldn't be a question of whether he was familiar with them. It would be a question of what facts were known to them officers, and they are the ones to testify about that.

By the Court:

Was this search made under a search warrant or not? I am not familiar with the transaction. Did the officers have a search warrant at the time of the inception of this transaction you are talking about now?

Mr. Thompson:
I think the evidence will show that they did.

By the Court:
Search warrant for the house?

Mr. Watkins:
Yes, sir. You have it in your file there, Your Honor. I'm going to offer it in evidence.

By the Court:
You claim that search warrant is invalid.

Mr. Watkins:
Yes, sir.

By the Court:
What is your claim, Mr. Watkins, with reference to the search on the porch?

Mr. Watkins:
That the search was invalid, unreasonable, because it was performed without a warrant for his arrest or a warrant for the search of his person, and was done without probable cause. The search of his person was executed without a warrant for his arrest, without a warranty for the search of his person, and without probable cause, and that search was not incidential to a lawful arrest. In other words they had no right to search this man under the circumstances on the porch.

By the Court:
Do you claim they were proceeding under the search warrant on the porch or not?

Mr. Watkins:

No, sir, they were not proceeding under the search warrant. It was to search the house.

By the Court:

Is the porch part of the house? I'm trying to get your contentions.

Mr. Watkins:

Yes, sir.

By the Court:

Is the porch part of the house?

Mr. Watkins:

The search warrant is not directed to the search of a person. It's the search of a premises only.

By the Court:

Suppose the owner of the premises is on the premises, can they they search him while he is there?

Mr. Watkins:

Well, if that is the situation, Your Honor, it would be advantageous to us, I believe, because I think we can convince you this warrant is absolutely invalid.

By the Court:

I was just trying to get your contentions, but aside from the fact that the warrant is invalid, you say—and I haven't read it, and don't know whether it is or not—do you contend that the search of Mr. Clay on the front porch of the house was not in execution of the warrant, or was?

Mr. Watkins:

I say this, Your Honor, in that respect. If it was, under the circumstances, in execution of the search warrant, that it was not valid because the search warrant is void. If it wasn't in execution of the search warrant that they did have, the search is illegal because it was without a warrant for his search, was not incidential to a lawful arrest. In either case the search would be unreasonable under the Fourth Amendment.

By the Court:

Now can you tell me what is wrong with the warrant, just briefly?

Mr. Watkins:

Yes, sir. Same thing that was wrong with the other one that we have already argued before Your Honor. This warrant, Your Honor, you will notice is based on some affidavits which are attached to it and we have gone thru the proposition that in a lottery case under the present federal wagering tax laws that there are two things necessary to show on the question of probable cause. First place, I realize that there are cases under the national prohibition act particularly, which hold that in order to search a premises or house it isn't necessary to describe any person or name any person in connection with the obtaining of a warrant so long as there is a description of the property that is sufficient, and so long as there is a sufficient probable cause stated in the affidavit to show that bootleg whiskey is being kept in the house, for example. But we deal here with a particular type of law. It isn't the federal law to operate a lottery, only in a case where some individual is operating a lottery without having bought the $50 occupational stamp. Now we say that in order to obtain a warrant

to search a house for paraphanelia used in a lottery business it is absolutely necessary to say in the warrant—name some particular person or persons who are conducting a lottery in that house, and who have not bought a stamp. Now that is the first thing we say is wrong with this warrant. I realize there are cases, Your Honor, which hold, in these liquor cases under the prohibition act, but there the requirement of probable cause is an entirely different thing. Just the existence of lottery paraphernilia in a house would not authorize a search of that house. You have got to show that somebody is running a lottery there, and you have got to show that that same somebody is running it without having bought a stamp. Now that's the first objection we make.

The next thing is, in getting this search warrant on that house the officers and the magistrate who issued the warrant apparently attempted to show some probable cause on the question of failure of Clay to buy a stamp, and if you will notice the last affidavit on the original search warrant by Mr. du Bignon—and that is it you have there, I think—that affidavit says, in substance, that Mr. du Bignon is a Special Agent of the Internal Revenue Service, and it's dated the 20th of June, one day before this search was made under this warrant; that he had searched the records in the office in Atlanta and found that Will Parks Clay hadn't bought any occupational stamp, and he searched the records and didn't find that any person who was known to him to be employed by Clay had purchased a stamp, and further he said that he searched those records on the 20th and that they didn't disclose the purchase of a stamp by any person residing in Clark County. Well, that last statement seems right peculiar to me, because I dare say it proves nothing, because a person could buy a stamp and show his residence in Bibb County when, in fact, he lived in Clark.

That's neither here nor there. The point is that affidavit wasn't made before Walter Doyle. It was made before Jim Sutherland in Atlanta on the 20th day of June, and that is what completely voids the warrant that is issued on it. The Fifth Circuit has just said, and the rule itself, Rule 41 (c), says that it can issue only on the affidavit made before the officer issuing the warrant. Now, there is an affidavit—

By the Court:

Well, was this affidavit presented to Mr. Doyle, the Commissioner?

Mr. Watkins:

Yes, sir, but I want to read Your Honor—I don't want there to be any doubt in Your Honor's mind on that. The Fifth Circuit has passed on it. It was presented to him by one of the three officers who were here, and under the evidence we have taken heretofore I think Mr. du Bignon stated that he was in Columbus on the 21st of June.

By the Court:

You started to mention another affidavit. Didn't some other agent deal with this?

Mr. Watkins:

Yes, sir. There was an affidavit made before Mr. Doyle on the 21st day of June, 1955 by Mr. William A. Morris, in which he said that he had on June 6, which is 15 days before the search was made, and 15 days before this warrant was obtained, that he had on June 6 searched the records in the District Director's office and found that Clay had not on that day or prior thereto obtained a stamp, and that no person using the last name of An-

derson had obtained a special occupational tax stamp for the fiscal year ending June 30, 1955. Now, of course, you can buy a stamp any day in any fiscal year, and there must have been some concern in the officer's mind when he was seeking this warrant about that affidavit made before Mr. Doyle, because there was two weeks there that anybody could have gone and bought a stamp. So this probable cause on showing a failure to pay the occupational tax just isn't shown by this—by the affidavits used to support the warrant, because we have to consider, under our theory of the case at least, that Mr. du Bignon's affidavit, which was evidently made by him before Mr. Sutherland to perfect the probable cause question that was left in a state of great uncertainty, at least, in their minds, on Morris' affidavit. He makes another affidavit and sends it down here to Mr. Doyle. And here's what the Fifth Circuit said about it.

(Reading of law and further argument.)

By the Court:

You contend that the two weeks interval with respect to the other affidavit invalidated it insofar as a basis of the search warrant is concerned?

Mr. Watkins:

Yes, sir. That is our contention insofar as the search warrant is concerned. In addition, Your Honor, I don't want the Court to overlook the fact that we are contending that in a lottery case the warrant itself must name somebody.

By the Court:

Have you got any law for that?

Mr. Watkins:

No, sir. I have all of the lottery cases, but I just—I'm taking the position here that a lottery case under this occupational tax law is different from a liquor case, because—

By the Court:

Doesn't the constitution require that it describe the place to be searched?

Mr. Watkins:

Yes, sir.

By the Court:

Not the person or ownership, does it?

Mr. Watkins:

Based on this requirement and the Louisiana case with which Your Honor is familiar we think it is necessary that the affidavit show—I mean that the—the affidavit at least, and the warrant ought to show the name of some person or persons who are alleged to be operating the lottery business because the operation of a lottery isn't illegal under federal law unless the operation is carried on by some person who hasn't bought the stamp.

The Court:

What do these affidavits show with reference to the ownership of the premises or the occupancy of the premises?

Mr. Watkins:

They don't show anything, I don't believe, Your Honor.

The Court:
Or the business carried on at the premises?

Mr. Watkins:
They don't show anything. I can certainly say I think that they don't show enough to show any probable cause for the operation of a lottery in the place. Now there is a District of Columbia case—

(further argument.)

By the Court:
Well, let's go ahead with the evidence.

Mr. Watkins:
I believe Government counsel had him on cross examination.

By the Court:
Yes, and you were asking him, I believe, Mr. Thompson, about other searches, and money obtained from him on other occasions. Do you think that is necessary? We have to confine this preliminary inquiry within reasonable bounds.

Mr. Thompson:
If the Court please, I need not pursue that line of questioning any further.

By Mr. Thompson:
Q. Mr. Clay, so far you have stated three different times that the officers told you you were under arrest. Originally you said they pulled the sack out from under your arm and said "This is it. You are under arrest". Next, you said that when they couldn't get into the house they told you you were under arrest, and—

A. I said they—

Q. —the third time you said that after they got in the house, in the living room, they said "You are under arrest".

A. That's when they did.

Q. The other two times you weren't telling the truth about it?

A. I don't think I said that. When they snatched the sack out from under my arm and opened it and looked in there they said "This is what we want", and that was all that was said until after they put me under arrest, when I was inside.

Q. Did both of the officers snatch the package from under your arm or one of them or how did that come about?

A. I don't think it was but one of them, because right at that particular minute I didn't see but one of them.

Q. That was the only one you saw?

A. During the confusion there Mr. Pair run around me and jerked the door open.

Q. Where had you come from immediately before the time you drove into the driveway, Mr. Clay?

A. I had come from Watkinsville, Georgia.

Q. And from where had you gone to Watkinsville?

Mr. Watkins:

Your Honor, I don't know that that is material and we object to it on the grounds that it isn't. The question is just what the circumstances were right then and there. If he wants to go into the probable cause, that's not up to this defendant to—it's immaterial so far as he is concerned what these other officers knew about it.

By the Court:

I'm inclined to think so. What do you think, Mr. Thompson?

Mr. Thompson:

If the Court please, he says if I want to go into probable cause; as I understand it, that's what this hearing is for, to determine whether there is probable cause for this search.

By the Court:

Very well, go ahead and ask him.

Q. Mr. Clay, from where had you gone before you arrived at Watkinsville?

A. I had left Macon.

Q. Did you stop in Watkinsville?

A. I stopped somewhere and got a tank of gas. I think it was Watkinsville.

Q. When you say you came from Watkinsville actually you came from Macon?

A. Yeah, but I made one stop, maybe two.

Q. What point in Macon did you depart from?

Mr. Watkins:

We still object to that, Your Honor. It's not relevant to the question here.

Mr. Thompson:

If Your Honor please, the question here is—

Mr. Watkins:

The officers may not know a thing in the world about where this man was that morning. The test is what they knew, if it's on a question of probable cause; not what he might say now, but what they knew when they made this arrest, and the search.

By the Court:

That's right, but suppose they—you can't have all the witnesses on the stand at one time—suppose they do know where he came from?

Mr. Watkins:

Then let them testify.

By the Court:

Do you expect to show that the officers know where he came from or not, Mr. Thompson?

Mr. Thompson:

Yes, sir, I do expect to show—

Mr. Watkins:

Show that they followed him, you mean. You don't mean that—

Mr. Thompson:

I expect to show that they knew where he came from.

By the Court:

Very well. I overrule the objection.

Mr. Watkins:

Maybe we had better put them under the rule then. I didn't anticipate we would go so far afield on this question. We ask that the rule be invoked.

By the Court:

All right. I'll ask that the officers retire. Go ahead Mr. Thompson.

(Officers retired.)

Q. From what point in Macon had you come that day?

A. I don't remember starting out from any particular point. I think I stopped once or maybe twice on the way over.

Q. But you don't know where you left from in Macon?

A. No, I don't remember.

Q. Had you driven any other vehicles in Macon that day?

A. I don't remember.

Q. Mr. Clay, you mentioned a moment ago that they searched your car. What car was that?

A. I didn't say searched my car. I said they searched the car I came in. The one parked in the drive way.

Q. You said a minute ago they searched your car. You are changing that now and saying they searched the—

Mr. Watkins:

Your Honor, he doesn't have to change that. His possession of that automobile is quite apparent and we object to Counsel telling the witness, "You are changing your testimony".

By the Court:

Yes, there's no use to argue. Just ask him whose car it is if you want to know that.

Q. Well, whose car was that you were driving?

A. It belonged to Miss Mary Cotton.

Q. These items that were removed from your automobile, Mr. Clay, were they observable from the outside of the car without going into it?

A. No, sir.

Q. Where were they?

A. On the front seat.

Q. You couldn't stand outside of the actomobile and look thru the window and see them?

A. Automobile standing still, yes, sir, you could.

Q. Mr. Clay, the first time you saw one of the officers here you stated that he had a pistol in his hand?

A. Yes, sir.

Q. And that officer was Lewis?

A. Yes, sir.

Re-Direct.

By Mr. Watkins:

Q. Was the automobile that you drove up there in parked on your premises?

A. Yes, sir.

Q. Of your residence at 140 Morton Avenue?

A. Yes, sir.

Q. When the officers looked in it?

A. Yes, sir.

Q. And searched it?

A. Yes, sir.

(Witness excused.)

MRS. MATTIE BELL ANDERSON, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Watkins:

Q. Your name is Mattie Bell Anderson, isn't it?

A. Yes, sir.

Q. You are asking the Court here to suppress some evidence on this case against you?

A. Yes, sir.

Q. Back in June, on June 21, 1955, last year, where did you reside?

A. 140 Morton Avenue, Athens, Georgia.

Q. Clarke County?

A. Yes, sir.

Q. Do you remember the occasion of Mr. Richard E. Lewis, Mr. William A. Pair and Mr. William A. Morris, who are government agents, searching your house up there?

A. Yes, sir. I remember three men coming there. I didn't know who they were. They never told me who they were, their names. They told me something about the government after they got about half thru searching the house, after I asked them who they were.

Q. Did they search the entire house?

A. Yes, sir, every drawer and everything else.

Q. You heard me read off the things to Mr. Clay on the witness stand. Were all those things there in the house?

A. Yes, sir.

Q. And were they taken by the officers?

A. Yes, sir.

Q. Now what about that strong box which had the insurance policies. What insurance policies were those?

A. It was insurance on the children.

Q. On your children?

A. Yes, sir.

Q. How many of them were there, the policies?

A. Well there was three for each one and that would be twelve all together.

Q. Were those paid up policies?

A. Yes, sir.

Q. And there was $4,000, I believe, in the strong box too?

A. Yes, sir.

Q. And some notes receivable, I believe?

A. Yes, sir.

Q. Was that your property?

A. Yes, sir, mine and my mothers.

Q. And all the other property that has been described and you heard testified about was in your possession there in your own house?

A. Yes, sir.

Q. Your home?

A. Yes, sir.

Q. Where you were living?

A. Yes, sir.

Q. Now did the officers ask you to let them enter your house and search it on that day?

A. No, I told them—they—seem like one of them said "Open the door", and I said "I'm not going to do it". I said "I'm not going to open the door". He said, "Well, we'll break it down then". I said, "Well I'm not going to open it".

Q. And did he break it down?

A. About that time he jerked it and came in.

Q. Was there some kind of a latch on the door?

A. Yeah, a latch on the screen door.

Q. Just a wire screen door?

A. Yes, sir.

Q. Were you present when they made the search of the house?

A. Yes, sir, I was in the house.

Q. Had you been sick prior to that?

A. Yes, sir, I had been in the hospital for ten days and I had just been home a week.

Q. Had you had some operation?

A. Yes, sir, I had had an operation.

Q. Were you just convalescing from your illness?

A. I was just moping around the house. I hadn't even been out of the house.

Q. Did they exhibit to you a search warrant that they had?

A. They didn't hand nothing to me. I didn't see it until they was about half thru searching.

Q. You didn't see what?

A. I didn't see the search warrant until they was about half through. I think they laid it on the television or something.

Q. How long had you made 140 Morton Avenue in Athens, Georgia, your residence?

A. I moved there on August 7.

Q. August 7?

A. 1954.

Q. You had been there almost a year?

A. Almost a year.

Q. Been living there?

A. Yes, sir.

Q. What is your mother's name?

A. Mrs. Clara Willis Cravey.

Q. How old is she?

A. She was 64 years old in December.

Q. She live with you?

A. She lived around about. She lived with me as much as she do with anybody else, or more. We bought that for a home.

Q. Was she living there at that time, on that date?

A. She wasn't there, but some of her things was there, you know. It was her home.

Q. Her home when she was staying with you?

A. Yeah, when she wanted to stay with me.

Q. Did she have other places that she staved?

A. Yeah, he stayed around with her children.

Q. Others of her children?

A. Yes, sir.
Q. Where was she at that time?
A. She was in Macon somewhere, I don't know.
Q. Visiting some of the other children?
A. Yes, sir.

Cross Examination.

By Mr. Thompson:

Q. Mrs. Anderson, where were you that day when Mr. Clay arrived at home?

A. Well, I was lying down on the couch in the living room.

Q. Did you arise from the couch at any time?

A. I heard some kind of commotion outside and then is when I riz, and seemed to me like I opened the wooden door—I believe it was kind of cool that day—and I opened the wooden door and the screen was latched and so about—they was standing at the door when I opened the wooden door and he told me to open the door and I said, "I'm not going to do it", and he said, "Well, I'll break it down", and I said "I'm not going to open it", and about that time he broke it down.

Q. Did he tell you why he wanted you to open the door?

A. No, he didn't say why or what he wanted.

Q. Didn't mention anything at all about a warrant?

A. No, I didn't know what he wanted.

Q. Did he have any papers in his hand at the time?

A. I don't remember whether I seen any papers or not. He didn't say anything about no papers.

Q. You were rather excited at the time?

A. Yeah, I didn't know what is was all about. I thought it was a hold-up man or something.

Q. Did you listen carefully at everything he said? You know certainly that he did not tell you he had a warrant to search the house?

A. No, he didn't say nothing about no warrant to search the house.

Q. You testify positively that you didn't hear anything—

A. If he did I didn't hear him say it, and I'm pretty sure he didn't.

Q. Was the door open or not when Mr. Clay was arrested?

A. It was closed because they were standing there with guns in his back when I opened the door.

Q. How many were standing out there with the guns in his back, Mr. Anderson—Mrs. Clay or Anderson?

A. Seems to me like there was two.

Q. You know which one was holding the gun?

A. No, I didn't know them, wouldn't know them apart no way, by name. I don't know them by name now.

Q. Mrs. Anderson, just exactly what happened after the officers came to the house?

A. Well, they came on in and pushed him in, one of them did, behind him. One of them broke the door down and come in and the other pushed him in behind him and made us all sit in the front room, and two of them went in the bedroom and I got up and went on in there to lay down on the bed, and one was in the chest searching and the other one was in the desk, and they broke the desk drawer open, and when I would get up to leave out of there they would make sure I went back where the other one was. They kept their eyes on me all the time.

Q. Did they arrest you?

A. They had me under arrest there. I couldn't get up and move nowhere without them right behind me, all the kids too.

Q. Did they tell you you were under arrest?

A. No, they didn't tell me, but they wouldn't let me go around the house nowhere.

Q. Did they tell Mr. Clay he was under arrest in your presence?

A. I didn't hear them but I guess they did.

Q. In what rooms did they search?

A. All over the house, porches, house, garage and there was a car out in the garage and they searched it too.

Q. When they left they took Mr. Clay with them?

A. Yes.

Q. They didn't take you?

A. No, they didn't take me.

Q. When you say they broke down the front door what do you mean?

A. Pulled the latch off, is what I mean.

Q. That's the little latch that locks it?

A. Yeah.

Q. They didn't tear the door off the hinges?

A. No, but some of the screen was tore.

Q. You don't know which one of the officers did that?

A. No, I don't.

Q. When was the first time that they mentioned to you having a warrant for the search of the house?

A. Sometime after—way after they got in the house. I don't remember just when.

Q. Were they standing there questioning you and mentioned it, or did one of them come out of the room and just hand it to you, or what?

A. No, they didn't hand it to me. It was laying on the television.

Q. You don't know when they laid it over there?

A. No, I sure don't.

Q. You don't know whether they laid it there just before they left or just after they got there or when?

A. Sometime while they were searching.

Q. This was in June, June 21, was it not, 1955?

A. Yes, sir

Q. And at the time the officers arrived there the door was closed? Is that correct?

A. Yes, sir.

Q. Just exactly when did they put Mr. Clay under arrest, before or after you opened the door?

A. Well, I couldn't tell you that because I didn't hear it.

Q. You never did hear them say anything about him being under arrest?

A. No. Of course I was excited, and I don't remember when they said they put him under arrest.

(Witness excused. Movants rested.)

MR. WILLIAM A. PAIR, being called by the Government, and having been duly worn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are William A. Pair?

A. That is correct, sir.

Q. State your full occupation and assignment?

A. I am a Special Agent with the Intelligence Division of the Internal Revenue Service, assigned to investigate fraud in any of the taxes imposed by the United States government.

Q. Does that include an investigation of the gambling laws and protection and enforcement of the gambling wagering tax act?

A. It does sir.

Q. How long have you been engaged in that particular phase of your work?

A. I have been a special agent since April of 1953, at which time I started enforcing the wagering tax laws.

Q. Are you familiar with the form of wagering called lottery or bug; or numbers?

A. Yes, sir, I am familiar with the bug.

Q. Will you describe, Mr. Pair, just exactly how the bug operates?

A. The bug, as it is commonly called in this section of Georgia, is a form of lottery with the winning based on the stock market figures out of the New York stock exchange, that is the stock and bond figures.

Q. Let's start a little before that, Mr. Pair. Now the lottery or numbers game or bug is a form of betting is it not?

A. It's a form of gambling.

Q. And you bet that a certain number will be the number of the day?

A. That's correct, sir.

Q. Now who takes those bets?

A. The person accepting the wagers is commonly called a writer. A person placing the bet is called a player or a better. A writer may have a small section of town in which he operates, a territory that he operates in. He may take bets, accept bets, from hundreds of individuals or he may accept bets from just a few, depending on the territory that he might have. He accepts the bet from the individual. In this particular type of lottery we have here called the bug, the bet is placed with the writer to the effect that a three digit number, whatever he might pick to be the winning number for that day, will hit. The bet is recorded by the writer in triplicate. The original of the recorded bet is turned over to a pick up man. The second copy of the recorded bet is given to the

player or the better, and the tissue copy or third copy of the recorded bet is retained by the writer himself. The money generally changes hands from player to writer at the time the bet is accepted. Now the recorded bet is on a small piece of paper approximately 2 by 4 inches. The recorded bet will show the date, the number that is being bet on, the amount of money that is being bet and a writer symbol number or letter, code of any kind that they might chose to use, something to identify the writer by. The tickets are also numbered on the bottom of the ticket.

Q. When are these bets placed? Any particular time of the day?

A. They are placed at all times of the day, but for—er—if the bet is to be placed for a given day in general it must be recorded or placed by around 11 or 11:30 in the morning. Now bets are accepted later in the day but it will be for the next day's business.

Q. The betting for one particular date would close by 11 o'clock or some such time?

A. Eleven to twelve o'clock, yes, sir. There is some lee-way there in different lottery or bug companies.

Q. Then what does the writer do with all of the tickets he has?

A. The writer assembles the originals of the tickets he might have and by around 11:30 to 12 o'clock he turns these tickets over to another person who is called a pick up man. This pick up man also has a route of his own during which time he collects the tickets from the varoius writers. He may or may not get the money from the writers at that time, depending on the arrangement that he has worked out previously with each writer, but he does secure the originals of the tickets from the writers. He, in turn, when he has picked up the tickets from his whole route, turns the tickets over to what is called a

sack man. The sack man picks up tickets from each pick up man. The sack man then, by prior arrangement, takes these tickets to a meeting place. He may take them to the banker at his check-up place or he may meet him somewhere else and turn the tickets over to him, and then the banker will proceed to his check-up place. That depends on the amount of trust that the banker has in the sack man. The tickets, when they are delivered to the banker, go to the headquarters and there they are checked numerically by the banker and his office crew, if he has an office crew. Being checked numerically means that the actual totals are run on the amount of the bets that are placed. The total is run for each individual pick-up man's route, not by writer, but by pick-up men. These check-ups are called ribbons or tapes. They are made on an adding machine and the adding machine tape is commonly called a ribbon. The ribbon will contain the total of each pick-up man's operation. It will generally have on it the date, it will have the pick-up man's code number, it will have any hits that might have been played for that particular day, and generally will have the winning number for that particular day.

Q. At his headquarters you mentioned a moment ago, what type of paraphernalia is generally found in a lottery operators' headquarters?

A. Well, generally, you will find two or three—depending on the size of the operation—several adding machines or calculators of the type that will print, er—this is needed in order to prepare the ribbons for return to the pick-up men. Generally there will be some form of record book for the banker himself, whatever type he may choose to keep. These are about the only absolutely essential items that he must have.

Q. Generally, where are the lottery books kept?

A. That depends upon the banker himself.

Q. You don't have any particular place?

A. No, sir, no particular place.

Q. Now when is the winning number for the day determined?

A. The winning number for the day is determined at four o'clock in the afternoon when the final stock market figures from the New York Stock Exchange become available. Since the winning number uses as its basis the total of the stock and bond market of the New York Stock Exchange those figures do have to become available. The stock market closes at four o'clock and it will be shortly thereafter before the figure becomes available to the banker.

Q. Becaue that is so, normally the banker will have all of the bets or tickets in his custody or in the custody of some one whom he trusts before four o'clock?

A. Yes, sir. As a general rule around two o'clock in the afternoon is about the latest time. They like to have a good bit of lee-way there in order to prevent any one from slipping a winning ticket in on them.

By the Court:

Q. Does the ticket have the better's name on it?

A. No sir, it does not have but each ticket has a number. The book runs numerically. If we had some of these books I might show Your Honor.

Q. How do they know who to give the money to if he wins?

A. The writer generally has a clientele that follows him and he remembers fairly well, but if he forgets the better will call on him and ask him for the money.

Q. And he will know what his number is?

A. Yes, sir. He'll have his copy of the ticket that he will show to the writer. The writer then will check in his own book where he retains a tissue copy of it that

bears the same number, and if he hasn't been paid off he in turn will ask the banker to check this number, and the banker will make a notation in his record that is commonly called an "overlook", and he'll go back to his headquarters then on his next occasion that he will go and he'll check the previous day's tickets to see if that was a winning number, and he overlooked it, and if he did why he pays it the next day.

Q. Well, the number on there is the number that the better is betting on?

A. There is always—

Q. A number that refers to the better?

A. Yes, sir.

Mr. Watkins:

Now, Your Honor, we don't think any of this evidence is admissible in this hearing, and I would like to state one broad objection on it for the record. We think it is entirely irrelevant and immaterial, and—

By the Court:

What do you say, Mr. Thompson?

Mr. Watkins:

—and what may be said by Mr. Pair about the lottery business in general we don't think has any bearing on any issues at all on these two motions.

By the Court:

Does it relate to probable cause, Mr. Thompson?

Mr. Thompson:

We think so sir.

By the Court:

Very well, go ahead.

By Mr. Thompson:

Q. During the course of your experience as a law enforcement officer how many lottery investigations have you had occasion to make? Can you give us an estimate?

A. I would say, sir, some twelve to fifteen major investigations, and numerous minor ones.

Q. During the month of May, 1955, Mr. Pair, did you have occasion to begin an investigation in Bibb County, Georgai?

A. Yes, sir, I did.

Q. And what was this investigation predicated upon?

A. During the month of May, 1955 I had confidential information that a lottery was being carried on by Will Parks Clay.

Mr. Watkins:

Now, Your Honor, we object to that unless he discloses the identity of the informer or informers. We think it is essential to the defense to know who it is that he gets this information from, particularly in a case of this type where Your Honor has got to pass on the question of whether or not probable cause existed and you won't know whether it's good information or not.

By the Court:

Can't I take his word for it if he regeraded it as confidential, as being reliable?

Mr. Watkins:

We don't think so, and we are objecting to it unless that is disclosed. We think it is essential to the case of the movants in this instance.

By the Court:

What do you say, Mr. Thompson?

Mr. Thompson:

If the Court please, the issue here is probable cause for this officer to believe Mr. Clay was operating a lottery. In the normal case, I might say in most cases, probable cause originates in information received by an officer. Historically officers have not been required to disclose the source of their information when it came from an informer.

By the Court:

Unless they have changed that rule fairly recently.

Mr. Watkins:

That rule is unless it is essential to the defense. It's been qualified and alway has been so qualified. The basis of our objection is that, getting down to the heart of this matter, it is essential to the defense of the movants on these criminal charges here that we all know what he acts on by way of hearsay in order to know whether or not it constituted probable cause for his action or his belief.

By the Court:

Well, I overruled that objection.

Mr. Watkins:

It isn't any hard and fast rule as stated by Government counsel that you don't force the divulgence of the name of the informer or informers. It it's essential to the defense the Supreme Court of the United States says it's got to be disclosed.

By the Court:

The policy is, though, as I read those decisions, that the officer should not be compelled to disclose the source

of his confidential information because he wouldn't get any information from any source if he did.

Mr. Watkins:

There are authorities to the contrary of that, Your Honor.

By the Court:

I'll overrule the objection. Go ahead.

By Mr. Thompson:

Q. Did you receive information from this informant on prior occasions?

A. Yes, sir, I had.

Q. Did you find it to be reliable?

A. Yes, sir I did.

Q. What action did you take following the receipt of this information with reference to your investigation?

A. On June 7, acting on this information, I placed a section of Napier Avenue under observation.

Q. I'll ask you prior to that time had you not checked the records of the tax division in Atlanta to determine whether or not Mr. Clay had paid the tax or bought a stamp?

A. No, sir, I did not.

Mr. Watkins:

What year was that he testified about now? June 7 of what year?

A. 1955, sir.

Q. Now on June 7 did you see Mr. Clay?

A. Yes, sir.

Q. Will you state the circumstances under which you saw him?

A. I observed Mr. Clay at 1:15 p.m. riding toward Macon on Napier avenue in an old, faded, 1941 Buick automobile. I followed Mr. Clay to a Shell Service Station in and around the 1000 block on Napier Ave. He went into the service station, and I parked at a vantage point where I could keep the car under observation. He got out of the automobile and walked around the service station, talked to two or three of the attendants for some five or ten minutes. I noted that a new 1955 black Oldsmobile was in the wash rack. While I watched they drove the automobile out of the wash rack and rubbed it down, rubbed it dry. In a couple of minutes Mr. Clay got into the 1955 Black Oldsmobile and drove off. Again he proceeded toward Macon. I followed him again. He went thru Macon and out the Gray Highway and I followed him to the Jones County line at which time he stopped, pulled over to the side of the road. In order to avoid detection I pulled into a service station several hundred yards from Mr. Clay. He remained where he was for approximately five minutes and then started off again out the Gray Highway, and traffic tied me up and I couldn't be out of the service station for some couple of minutes. When I was able to get out of the station I attempted to overtake Mr. Clay and could not. I went to Gray and there are several forks in the road there and at that point I abandoned the search for him.

Q. Mr. Pair, did you check the license number of the Buick that you saw Mr. Clay driving?

A. I took down the license number of the Buick, yes, sir.

Q. Did you have it checked to determine who owned it?

A. I did not check it, no, sir.

Q. Who did?

A. I gave it to another agent to check. Mr.—

Q. Who?

A. Bill Morris.

Q. Did the '55 Oldsmobile have a license tag on it?

A. No, sir, it did not have a license plate.

Q. All right. What was the next step in your investigation?

A. On June 8 I proceeded to the—along with Special Agent William A. Morris I proceeded to the point on the Gray Highway where I had last seen Mr. Clay, and concealed myself in the undergrowth along the side of the road, put the government car out of sight on a side road and watched for Mr. Clay, and at 1:15 p.m. he came by driving an Oldsmobile again heading toward Gray. Mr. Morris and myself followed Mr. Clay on this occasion to the intersection of U. S. Route No. 129 and 441 where we lost him again due to traffic conditions.

Q. What was the next phase of your investigation?

A. On June 9 we took up a position on the Gray Highway again and Mr. Clay passed us at 4:50 p.m. We fell in behind him and followed him to the outskirts of Athens, Georgia, and in the vicinity of what is called Five Points there, I believe, at which place we lost him, and by the use of confidential information in Athens we found his car, about 10 or 10:30 that night, parked in the drive way of 140 Morton Avenue.

Q. That was this Oldsmobile?

A. Yes, black, 1955 Oldsmobile.

Q. Now during the times that you were following Mr. Clay on these occasions did you notice anything particularly about his driving habits?

A. Yes, sir. He is an extremely fast driver. We were drivinga '54 Ford which belongs to the Government and at times the Ford attained speeds of a hundred miles an hour and Mr. Clay would leave us completely. He would get out of sight. He would slow down then and we were

able to get him in sight again. His driving is irregular, very fast at times, speeds in excess of a hundred miles an hour, and then down to fifty miles an hour at times.

Q. It is difficult to follow someone who is driving in that fashion?

A. It's not difficult if you have a speedy enough car, but it's difficult to follow them without them knowing you are following them.

Q. Resorting to that means one could determine that someone was following them?

A. Yes, sir, they could detect some was following them.

Q. What was the next phase of your investigation?

A. On June 14, 1955, at 10:30 a.m. I had the Shell Service Station, where I had previously observed Mr. Clay switch automobiles, under observation and I saw Mr. Clay in a '54 Chevrolet with the burnt orange color go into the Shell Service Station and at 10:40 he left going out Napier away from Macon. At 12:20 p.m. I saw him in the same 1941 Buick Automobile go into the Shell Service Station, at which time he changed to the 1955 Oldsmobile and headed toward Macon. I was not able to follow him on that occasion.

Q. That was on June 14?

A. June 14, yes, sir.

Q. How many cars did you see him driving that day?

A. Three automobiles sir.

Q. The '41 Buick, the '54 Chervolet and the '55 Oldsmobile?

A. Yes, sir.

Q. The Oldsmobile have a tag on it yet?

A. No, sir.

Q. What was the next phase of your investigation?

A. On June 15 at 11:10 a.m. I again had the Shell Service Station under observation. I saw Clay enter the service station from the direction of West Napier in the

1955 Oldsmobile. He had the car serviced and he left going in the general direction away from Macon, out Napier Avenue. Now one other thing that I might add there is that on the previous afternoon I had contacted Special Agent Lewis, who is stationed in Macon, Georgia, and had requested that he go the next day, that is on June 15, to Athens, Georgia, and have the premises of 140 Morton Avenue under surveillance.

Q. To your knowledge did he do that?

A. Yes, sir.

Q. That was on June 15?

A. Yes, sir.

Q. On June 16, Mr. Pair, what was your conduct with relation to the investigation?

A. Again I requested Mr. Lewis to go to Athens, Georgia, and keep the premises at 140 Morton Avenue under surveillance. I had the premises of the Shell Service Station on Napier Avenue under observation. At 10:08 a.m. I saw—one little point before then; on my way to the Shell Service Station I observed Clay in front of 3760 Napier Avenue in the old '41 Buick automobile. As I passed by I saw him parked there. I went on to the Shell Service Station and placed the premises under observation. At 11:50 a.m. I saw Clay arrive at the Shell Service Station in the '41 Buick. He left at 11:55 in the '55 Oldsmobile headed toward Macon.

Q. And what was the next phase of your investigation?

A. On June 17, at 12:15 I saw Clay arrive at the Shell Service Station in the '41 Buick from the direction of down town Macon. He left at 12:18 p.m. in the '55 Oldsmobile. Again on that day I had asked that Special Agent Lewis be in Athens, Georgia, to keep the premises at 140 Morton Avenue under observation.

Q. That was June 17?

A. Yes, sir.

Q. Now what was the next phase of your investigation?

A. On June 20 I—

Q. Do you happen to know what day that was?

A. June 20, I believe, fell on Monday, sir.

Q. Now this lottery that we were discussing earlier, is that generally operated on week ends, Saturday and Sunday?

A. No, sir, it can operate only on the days that the New York Stock Exchange operates, which is Monday thru Friday.

Q. Now what did you do on June 20?

A. On the morning of June 20 I contacted Special Agent Fleming du Bignon by telephone in Atlanta, Georgia, and asked that he check the records of the District Director of Internal Revenue to see if Will Parks Clay or Mattie Bell Anderson had a wagering stamp and was paying excise tax. Mr. du Bignon made this check for me and told me that they did not. I requested that he prepare an affidavit for me and forward it to me, which he did. Later in the day I went out on the Gray Highway and at 1:05 pm near the Jones County line, Jones—Bibb County line, I saw Mr. Clay driving toward Gray in the 1955 Oldsmobile. I made no attempt to follow him.

Q. Now it was on June 21, the following day, that you secured a search warrant?

A. Yes, sir, on June 21 we secured the search warrant.

Q. That is the search warrant here in question?

A. Yes, sir. The search warrant was for the premises at 140 Morton Avenue in Athens, Georgia. We proceeded to Athens, Georgia, arrived there—when I say "we", I mean Special Agent, William A. Morris and Richard Lewis and myself, driving a government automobile proceeded to Athens, Georgia. We arrived there around noon of the 21st. We ate lunch there and around—I would

say 2 o'clock in the afternoon, we went out to Morton Avenue and parked on Morton Avenue approximately half a block from 140 Morton Avenue. At 2:40 p.m. we saw Mr. Clay come up Morton Avenue from the direction of the Macon Highway. He turned into the driveway of 140 Morton Avenue and we immediately proceeded to 140 Morton Avenue and turned into the driveway behind him. Mr. Morris was driving the automobile. Mr. Lewis was in the front seat with him. I was in the rear seat of the car. When I first saw Mr. Clay the left hand door of the 1955 Oldsmobile opened and he was getting out of the car.

Q. Just a moment. Where were you then?

A. I was still in the automobile, proceeding into the driveway of 140 Morton Avenue.

Q. Had your car stopped at that time?

A. Not at that particular time when I first saw him.

Q. Then what did he do?

A. We proceeded into the driveway and parked immediately behind him. Mr. Clay had, by the time we stopped the automobile, completed his act of getting out of the automobile. He stood with the car door—left hand car door open and looked at us. Mr. Morris and Mr. Lewis got out of the front seat. I got out of the back, and as I stepped out from behind Mr. Morris, Mr. Clay looked at me and turned around and ran for the house.

Q. Does Mr. Clay know you?

A. Mr. Clay knows me, yes, sir.

Q. You have had occasion on previous occasions to be in contact with him?

A. Yes, sir, I have.

Q. Personally?

A. Yes, sir.

Q. And which side of the car did you get out?

A. I got out of the left hand side.

Q. The driver's side?

A. I was in the back seat. Mr. Morris got out of the front seat and was in front of me and had the car door open and it wasn't until I stepped out from behind him that Mr. Clay saw me. He stood and looked at us up to that point and when he saw me he ran for the house.

Q. Were you officers armed?

A. I was armed. Had a 38 pistol in a holster in my belt. It was never removed from there.

Q. Did any of the other officers have weapons?

A. All of them had weapons, yes, sir.

Q. Did any of them brandish their weapons?

A. I didn't see any brandished, no, sir.

Q. Did you see the officers at the time?

A. I saw Mr. Lewis out of the corner of my eye, but I was looking at Mr. Clay. I could not state positively that he did or did not have a weapon in his hand.

Q. Now which side of the automobile was Mr. Clay on when he first saw you?

A. Left hand.

Q. What action did he take?

A. He ran when he saw me. He ran for the house. Mr. Lewis got out of the right hand side of our car and he ran after him. I ran after him and I shouted to Mr. Clay to halt, that we were federal officers. Mr. Clay didn't halt and by the time he reached the porch of 140 Morton Avenue Mr. Lewis and I had caught him. We caught him simultaneously. Mr. Lewis grabbed him on one side and I on the other. He was nearly to the door of the house, and when we grabbed him all three of us slammed up against the brick wall of the house at that point.

Q. What was the purpose of that? That was the momentum—

A. The momentum, yes, sir, all three of us were running and we were very close to the door when we caught

him. None of us could stop and we all hit the wall of the house.

Q. Let me interrupt a moment. Did Mr. Clay have anything in his hands, in his possession at the time you first saw him?

A. Yes, sir he had a brown paper bag.

Q. Now what is the significance of a brown paper bag to you?

A. Well, the significance is that is the type container that the lottery people carry their lottery tickets in.

Q. Now, over the period of time that you have been in the investigative field, in investigating lottery activities have you frequently found that to be the case?

Mr. Watkins:

Your Honor, I want to object to that, as being an expression of opinion, that the significance is that that is the type bag that lottery operators carry lottery tickets in. A brown paper bag could be used for anything.

By the Court:

I overrule that. The witness has had some experience, according to his testimony, in detecting lottery operations.

Q. When did you first see that bag?

A. When we turned into the driveway at 140 Morton Avenue. He was holding the bag in his hand at that time.

Q. What happened after you arrived on the porch and apprehended Mr. Clay?

A. The paper bag which he was carrying split and a couple, I believe two, smaller bags inside of the larger bag fell to the floor. Mr. Lewis released him and reached down and picked one of the bags up and looked into it. He said, "This is it." By that I knew he meant that

was lottery. I told Mr. Clay he was under arrest. Mr. Morris, who had been immediately behind me as we chased Mr. Clay to the house handed me the search warrant for the premises. I stepped to the door of the house, front door and Mrs. Anderson was at the door. She had latched the door in my presence.

Q. Did you see her latch the door?

A. I saw her latch the door. I took from my pocket my government pocket commission, told her my name, showed her the commission, told her I had a federal search warrant to search the premises of 140 Morton Avenue. She said "Whose name is in it?" I said, "It's in no name. It's for the premises of 140 Morton Avenue". Mr. Clay said, "Don't let them in. They got no business going in there unless there's a name on it." I said, "Do you reside here, Mr. Clay?" He said "No".

Q. He said he did not?

A. He said he did not. I said, "Do you live here, Mrs. Anderson?" She said, "Yes". I asked her to open the door then. She refused. I grabbed the door handle and jerked the latch off, went into the house, took Mr. Clay with us. There were two or three children present. I requested Mrs. Anderson and the children to sit down somewhere while we made a search of the house. I told Mr. Clay to sit down and reminded him that he was under arrest and to stay still. He sat down on a sofa there. Mr. Lewis maintained guard on him and we, Mr. Morris and myself, started a search of the premises.

Q. Did you ever give the search warrant to Mr. Clay—Mrs. Anderson?

A. She would not take it, and I laid the search warrant on the TV set in the living room where she was.

Q. Did you ever proffer it to her?

A. Yes, sir, I did.

Q. And what was her reaction?

A. She said she didn't have to take it, that it wasn't in her name. I told her that it was a properly prepared search warrant for the premises.

Cross Examination.

By Mr. Watkins:

Q. There was some scuffling going on about that sack, wasn't there?

A. The only scuffling going on, Mr. Watkins, was the fact that Mr. Clay was running and that we were attempting to catch him, and, as I said, we did catch him and when we did the momentum of three persons running did carry us against the brick wall of the house.

Q. And that was when the sack broke?

A. Yes, sir, that's correct.

Q. And the other sacks fell out?

A. That's correct.

Q. But you still had to look into it to see what was in it?

A. I believe Mr. Lewis opened the sack and looked in it.

Q. Well, you couldn't look at the sack in his hand and describe its contents?

A. The sack wasn't in his hands. It had fell to the floor. The sack that was within the bigger sack had fell to the floor; I believe two of them, two of the packages, one an envelope and one a brown sack, fell to the floor. Mr. Lewis recovered those. I did not.

Q. Well they had to be opened to reveal the contents?

A. They were not sealed, sir.

Q. To examine the contents?

A. They were not sealed. As to whether he had to pull them open, I don't know.

Q. But you couldn't—as you were chasing Clay and he—with the sack in his hands or under his arm, or however it was—

A. In his hand, sir.

Q. —you couldn't see what was in the sack?

A. No, sir.

Q. And you had no personal knowledge of what was in it? I mean you couldn't visualize, just look at it, and see that there were bug tickets in it, could you?

A. No, sir.

Q. Now Mr. Pair, I believe you stated that Mr. du Bignon made you an affidavit on June 20 in Atlanta?

A. I believe that is correct.

Q. And mailed it down here to Macon to you?

A. I believe that is correct, sir.

Q. And did you take that affidavit and present it to Mr. Doyle when you made the other affidavits before him in order to obtain the warrant?

A. Yes, sir, I think that's correct.

Q. There's no question about the fact that du Bignon was not present?

A. He was not present before the Commissioner, no, sir.

Q. And he made no affidavit before the Commissioner?—

A. No, sir.

Q. —Who issued the warrant. Now, Mr. Pair, had you ascertained that Mattie Bell Anderson lived at 140 Morton Avenue before you all went there on June 21 in your investigation? Had you ascertained that fact?

A. Only thru confidential information, sir. I had checked the—

Q. You mean—you say only thru confidential information. You are not discrediting the confidential information, are you?

A. No, sir.

Q. Well, you had ascertained that Mattie Bell Anderson lived at 140 Morton Avenue before you all went there?

A. Yes, sir.

Q. And before you got the warrant?

A. Yes, sir.

Q. Actually you also had ascertained that Will Parks Clay resided there during that time?

A. Yes, sir.

Q. You knew that?

A. Yes, sir.

Q. And there wasn't any reason in the world why, in making the affidavits before the Commissioner to get this warrant, that you could not have named them as the occupants of that house at 140 Morton Avenue, because you knew it at that time. Isn't that true?

A. I also had information to the effect that—

Q. Well now can you answer my question?

A. Please repeat it sir.

Q. At the time you obtained the search warrant for the premises known as 140 Morton Avenue Athens, Georgia, you have stated you knew Will Parks Clay and Mattie Bell Anderson lived there.

A. Yes, sir.

Q. Then you say there was no reason, factually speaking, why you couldn't have made oath before the Commissioner that they did live there?

A. That's correct, sir.

Q. So that he could have put in the warrant and the affidavits that were made before him that they were the residents occupying that house, and they could have been named in the warrant?

A. I had verified that to the extent of confidential information to the effect that that they lived there, which

I didn' believe that I should swear to sir. I understand that—I understood that that was not to be put under oath in the search warrant.

Q. Well, you put a lot under oath, Mr. Pair, in the affidavit that you did make, didn't you, by confidential informer?

A. Them, I should say, then, sir, that I could have stated in the affidavit that according to confidential information they lived there.

Q. Then actually you said in your affidavit that according to that information they lived there?

A. Yes, sir.

Q. Then there wasn't any reason why in the warrant that issued Mattie Bell Anderson and Will Parks Clay couldn't have been named as the occupants of that premises, is there?

Mr. Thompson:

I think the question has been answered several times, but it's becoming argumentative.

By the Court:

That might ask for a conclusion. He can testify what he knows about it of—

Mr. Watkins:

I want to get it in if he was in position to make oath that they lived there.

By the Court:

I believe you've already got it in.

Mr. Watkins.

As to Mattie Bell Anderson; not as to Will Parks Clay.

By the Court:

Yes.

Q. Mr. Pair, you and the other two officers who went to Athens on that day, you went up there for the purpose of arresting Will Parks Clay and searching that house, didn't you?

A. We went up there for the purpose of searching the house and of making an arrest if the necessary evidence to make an arrest was found, sir.

Q. Well now, didn't you go up there for the purpose of arresting Clay?

A. If we had the proper evidence to make the arrest, yes, sir.

Q. Didn't you expect him to come up there?

A. Yes, sir, I did.

Q. And you went on a day that you expected to see him?

A. Yes, sir.

Q. Then there was no reason why you could not have obtained a warrant for his arrest before you left here? Isn't that true?

A. No, sir. I did not think that I had the necessary evidence to obtain an arrest warrant. I thought I had the probable cause to ask for a search warrant, but I did not think that I had the probable cause to ask for an arrest warrant. Now I may be incorrect in what I thought, but that was my understanding. That's what I thought.

Q. You mean to say that it takes less evidence to get a warrant to search a man's home than it does to arrest him?

A. That was the premise that I have always traveled on, sir, that it took less to get a search warrant for a premises than it did for an arrest warrant.

Q. Well, when you saw Will Parks Clay there you set about to arrest him, didn't you?

A. When he fled, I did, sir.

Q. And that is the only reason you arrested him?

A. Yes, sir, had he not fled—

Q. You wouldn't have arrested him?

A. I would have searched the automobile because I would have felt that I had probable cause to do that. I would not have searched his person unless I had found something in the automobile to give me the right to arrest him. I would have made a search, served a search warrant and made a search of the premieses.

Q. Well, you didn't see—at the time you started your attempt to arrest him, you had no more information than you had when you left Macon, did you?

A. I had a—yes, sir. He had fled, which—

Q. That's all you base it on?

A. After I identified myself he fled. I figured that gave me some more cause.

Q. That's all you had? That's all you considered justified your arrest of him?

A. I attempted to stop him, yes, sir.

Q. You didn't get a warrant for his arrest then because you didn't think you had the information that was necessary to give the Commissioner in obtaining the warrant?

A. An arrest warrant, that is correct, sir.

Q. And you didn't get any warrant to search him, of course, for the same reason, search him personally?

A. No, sir. I secured a warrant to search the premises.

Q. Now Mr. Pair, what kind of a paper bag was this that you testified you saw Mr. Clay have in his hand?

A. It was a brown paper bag.

Q. About how high?

A. I would say roughly, sir, 12 to 14 inches.

Q. And is that the ordinary paper bag that is used by grocery stores?

A. It might be used—

Q. That the kind of bag you are talking about?

A. Yes, sir, that's correct.

Q. Is that a common item everywhere, that type of bag?

A. Yes, sir, it's a common item.

Q. There are no distinguishing factors about it that you recall?

A. None whatever.

Q. Just a brown paper bag about 14 inches high and 6 by 8 inches in—

A. Approximately that size, yes, sir.

Q. Was it folded up in his hand or just hanging in his hand?

A. To the best of my knowledge, Mr. Watkins, it was folded up at the top and hanging in his hand.

Q. Could have been some potatoes in it, isn't that true?

A. Could have had anything in it, sir.

Q. That's right.

Re-Direct.

By Mr. Thompson:

Q. You say that after you got to Athens and pulled in behind Mr. Clay he fled? In addition to that did you see the bag in his hand?

A. Yes, sir.

Q. Was it you or Mr. Morris who checked the telephone company records?

A. We made two checks of the records, Mr. Thompson, for two different things. I checked the records there along with Mr. Morris to get the telephone listing of 140 Morton Avenue and—

Mr. Watkins:

Now, Your Honor, I want to object to all testimony previously on this and to this now concerning telephone records, on the ground that this witness' testimony about his search of those records would not be the highest and best evidence. The records are available, properly identified by the custodian of them and that would be the highest and best evidence.

By the Court:

As to what they show?

Mr. Watkins:

Yes, sir.

Mr. Thompson:

As to what they show, sir, it would be the highest and best evidence. As to the probable cause this man had for arresting him the testimony would be the highest and best evidence.

Mr. Watkins:

No, sir, we don't agree to that.

By the Court:

Well, hearsay can constitute probable cause can't it?

Mr. Watkins:

I think there are some cases that hold that hearsay evidence isn't sufficient to constitute it.

By the Court:

Well, I over-rule the objection. I'll let in on the question of probable cause. You know the Supreme Court held last week that probably hearsay is sufficient for an indictment.

Mr. Watkins:
I read that case, Your Honor.

By the Court:
What do you say about that?

Mr. Watkins:
I don't agree with it. I think you had just as well do away with the bill or rights if we shut our eyes, and everybody will be indicted some day for something that may not be a criminal offense but we'll all have to go to the penitentiary for doing it, I guess.

By the Court:
Well, I overrule your objection.

Mr. Thompson:
At this time I would like to state, if the Court please, that it is 7:30 at night, and I have three witnesses—

By the Court:
Well, just finish with this one.

Mr. Thompson:
I would like to state for the record, sir, that I have two witnesses who are present in Macon and who do have those records and who I can have here in the morning or some other time.

Mr. Watkins:
The judge has already ruled.

By the Court:
Yes, I have already ruled on it.

Mr. Thompson:

I am aware of that, but—

By the Court:

You can bring the records any way, if you like.

By Mr. Thompson:

Did you check the records, Mr. Pair?

A. As to the listing of the telephone; number of the premises at 140 Morton Avenue, I did.

Q. What name was that listed in?

A. The telephone was listed in the name of Clara Willis?

Q. Did you check the deed records of Clarke County, Georgia?

A. Not at the time, sir.

Q. Did you check them prior to the time that you made this arrest?

A. No, sir.

Q. Did you have any occasion to check the long distance telephone calls that had been made from the telephone at 140 Morton Avenue in Athens?

A. I did not sir.

(Witness excused.)

(Recessed 7:30 p.m., Oct. 17—4:45 p.m., Oct. 18.)

MR. WILLIAM A. MORRIS, being called by the Government, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Mr. William A. Morris with the Internal Revenue Service?

A. That's correct.

Q. A special agent with that service?

A. Yes, sir, I'm a special agent.

Q. How long have you been engaged as a special agent in the Internal Revenue Service?

A. Since May, 1951.

Q. May of 1951?

A. Yes, sir.

Q. Mr. Morris, during that period of time what, specifically, have you been engaged in investigating, what nature of violations?

A. I have investigated both alleged income tax evasion cases and wagering tax violations.

Q. Are you now assigned exclusively to any particular investigations?

A. I am not assigned exclusively. I spent the major portion of my time investigating wagering tax violations.

Q. And you have been making such investigations since when?

A. The law became effective on November 1, 1951. I have been so engaged since that time.

Q. In the course of your employment, Mr. Morris, have you had occasion to investigate a person named Will Parks Clay?

A. I have.

Q. Now beginning in approximately May of 1955, will you state from that point forward the nature and extent of your investigation sir? Just begin at that point.

A. Well, in the latter part of May, 1955, Agent Pair and I received information to the effect that Mr. Will Parks Clay was engaged in operating a lottery in the Macon vicinity, and commencing shortly after the date that we received such information, Mr. Pair and I began a joint investigation of the alleged violation.

Q. Just exactly how did you begin your investigation?

A. Our first step was June 6, 1955 at which time I carefully examined the records of the District Director of Internal Revenue to ascertain whether or not Mr. Clay, or any other persons that my informer had told me were associated with Mr. Clay, had a wagering occupation stamp or was paying excise tax. I found that Mr. Clay did not have a wagering excise stamp and was not paying wagering excise taxes, did not have a wagering occupational stamp, and—

Mr. Watkins:

It's understood, Your Honor—I don't want to keep repeating—we do interpose objections to the witness' testimony about any informer or confidential information unless he discloses the name of that informer because we think it is essential to these defendants' defense.

By the Court:

Very well. We will consider that as a continuing objection.

Q. With regard to the source of the information, Mr. Morris had you received similar information, or information regarding other cases from that same source on prior occasions?

A. I had.

Q. Had you found it to be reliable?

A. I had found it to be most reliable.

Q. Now from the point on May 6 when you checked the Director's records what was the next step in your investigation?

By the Court:

That was June 6, wasn't it?

Q. June 6?

A. On June 8 Special Agent Pair and I staked out a position on the Gray Highway which is highway No. 129, U. S. 129. We were located in a concealed position near the Jones County line. From this position we observed the Gray highway, watching for Mr. Clay. At 1:15 Mr. Clay passed this position driving a 1955 Oldsmobile '98 automobile. He was heading in a Northerly direction. We followed Mr. Clay approximately 35 miles. At the intersection of U. S. No. 129 and 441 we lost Mr. Clay due to traffic conditions and the extremely high rate of speed that Mr. Clay was driving.

Q. At what rate of speed did he drive?

A. Mr. Clay was driving between 85 miles per hour and 100 miles per hour.

Q. Was that speed consistent at all?

A. No, sir, the speed was not consistent. He would drive for a period of time at an extremely high rate of speed and would then fall back to a very slow rate of speed, which is a procedure, from my experience in working cases of this nature, that is commonly used to determine whether or not any person is following them.

Q. What was the next phase of your investigation?

A. On June 9, the next day, Mr. Pair and I maintained surveillance on this same Gray highway and this occasion we stationed ourselves approximately 3 miles this side of the City of Gray. At—I'll have to refer to my notes as to the time—at 4:50 p.m. Mr. Clay passed our position

in the same Oldsmobile automobile. It's a 1955 model Oldsmobile 98. He was driving in a Northerly direction. On this occasion we were able to follow Mr. Clay to the outskirts of Athens. Mr. Clay, on this occasion, was driving in somewhat the same manner as the preceding day, driving first at extremely high rates of speed, sometimes in excess of a hundred miles an hour, and then at very slow rates of speed. We were able to follow Mr. Clay all the way to the outskirts of Athens, Georgia. In the outskirts of Athens we lost him due to traffic conditions.

Q. Mr. Morris, what was the next step in your investigation?

A. The next step was, that same evening we were able, thru some information, to determine that Clara Willis, who is a person that was known to be associated with Clay, owned a house in Athens, Georgia. We located this house and at approximately 9 o'clock p.m. I walked past the house and at that time I saw a 1955 Oldsmobile automobile parked in the driveway and the automobile was identical with the car that we had previously followed on that same date.

Mr. Watkins:

I didn't catch that time in the morning, nine what, sir?

A. That was at night, sir, approximately 9 o'clock at night. On the following date—I beg your pardon—on the 14th of June, from the hours of 10 o'clock a.m. until 2:30 p.m. I maintained surveillance on the residence occupied by the Cotton family. That's Arvin Q. Cotton and Mary C. Cotton.

Q. Where is that, Mr. Morris?

A. The address is 3644 West Napier Avenue, Macon, Georgia. At 10:45 a.m. I observed Mr. Clay as he arrived at this location. He entered the rear door of this house. There were six or seven automobiles parked in the rear yard of this house.

Q. Well, now, Mr. Morris, is that a business section or is it a residential section?

A. This is a residential section. The house is located in a residential section.

Q. And these automobiles were in the yard of that house?

A. Yes, sir, they were.

Q. Go ahead sir.

A. At 10:45 I observed Mr. Clay as he entered the rear door of the house. I did not see Mr. Clay as he left that house on that day.

Q. Now how did he arrive there? Was he in an automobile?

A. I was unable to see from the position from which I was watching on this particular date as to how he arrived at that location. My first sight of him as he was walking up the rear steps, entering the rear door.

Q. Go ahead sir.

A. On the 15th., which is the next day, from 10:19 a.m. until 1 p.m. I again observed from this same location. At 10:19, when I arrived at this position, there were five cars parked in the rear and side yard of this residence.

Q. Is that an apartment house or a large building or just what kind of a house is located there?

A. I would say that this is a five or six room residence type house. It's not an apartment house.

Q. Go ahead.

A. Included in the automobiles parked in this yard were an Oldsmobile, the same Oldsmobile that we had seen Mr. Clay driving, and a 1954 Chevrolet automobile, and of course, several other cars. There were five cars in all in the yard.

Q. And you saw Mr. Clay arrive there?

A. No, sir. I did not see him arrive at that particular time. When I arrived at the location the Oldsmobile and the Chervolet, together with three other cars, were parked in the back yard.

Q. Did you see Mr. Clay on that date?

A. Yes, sir, I did. At 10:34 a.m. a colored woman, who was about 5′ 8″ tall and weighed approximately 225 pounds, carrying an unbrella, was observed to leave. I observed her leave the rear door of this house. Mr. Clay then came to the rear door, stood in the door and talked with this woman, or appeared to be talking with this woman. At 11:06 a.m. Mr. Clay left the residence in the Oldsmobile automobile. On this same date, at 11:18 a.m. Mr. Clay returned in the Oldsmobile automobile to the Cotton residence. He got out of the automobile and entered the Cotton residence. As he got out I observed that he was carrying a package in his left hand and this package was of the type and size generally used in lottery operations. It appeared to be a small brown paper sack, and from my experience in working lottery investigations I would say that it was the type of sack that is usually used in transporting lottery tickets.

Q. This was on what date?

A. This was on the 15th of June at 11.18 a.m. At 11:22 a. m., he came back out of the rear door and walked towards the Oldsmobile automobile. I was unable to see whether or not he got into the automobile from the position in which I was watching, but immediately after he came out I did see the Oldsmobile leave. The Oldsmobile was parked on the left hand side of the house and from this position I could not see whether he got under the wheel of the car or whether he did not, but I did see the car leave immediately after he came out of the back door.

Q. Continue sir.

A. All right. On the 16th of June, at 10:08 a.m., I observed Mr. Clay standing beside the road in front of the address 3760 Napier Avenue. This is an address of a building that was once used by Mr. Clay. The building has since burned down. Mr. Clay was standing beside a 1941 Buick automobile. At 10:22 a colored male driving either a 1946 or 1947 model Buick convertible stopped and Mr. Clay went over to his automobile and talked with this colored person, or appeared to be talking to him. At 10:34 a.m. the colored person left in the 1946 or '47 Buick automobile heading towards town. At 10:39 a.m. I passed the service station, which is located at 3102 Napier Avenue in Macon, and I saw the Oldsmobile that had been used by Mr. Clay being serviced at this location.

At 11:04 I saw Mr. Clay enter the rear door of the Cotton residence. At 11:39 I saw Mr. Clay leave the rear door of the Cotton residence and walk towards Mann's drive-in, which is situated adjacent to this house at 3644 West Napier Avenue.

Q. Did you continue your surveillance on the 17th?

A. On the 17th I arrived at the Cotton residence, which is 3644 West Napier Avenue, at 10:08 a.m. The 1954 Chevrolet and several other automobiles were parked in the rear yard. At 11:25 Mr. Clay arrived and entered the rear door. I was unable to see what car Mr. Clay was driving at that time. At 12:03 Mr. Clay left the Cotton residence by the rear door. At 12:20 Mr. Clay was observed by me to arrive at the Cotton residence in the 1955 model Oldsmobile and he departed in the Oldsmobile at 12:44.

Q. And what was the next phase of your investigation?

A. The next phase of my investigation was on June 20, 1955, at which time I personally examined the records of long distance telephone calls placed from the residence located at 140 Morton Avenue. These were toll calls

either made from the telephone or collect calls made to this telephone located at that particular address. These telephone calls showed numerous calls to persons with either a lottery record, a criminal record for engaging in lottery operations, or with a reputation for engaging in the lottery business.

Mr. Watkins:

Your Honor, now we object to all that testimony, first, on the grounds that the highest and best evidence of what the telephone record shows would be the records themselves; and, secondly, we don't think this witness is qualified to testify about the reputation of some other person who he has not identified. I think Mr. Thompson would have to lay the proper foundation or ground work before he would be qualified to testify as to reputation of any given person, much less some person whom he hasn't identified.

By the Court:

Well, all that is in the affidavit, isn't it?

Mr. Watkins:

Yes, sir. That's one of the reasons that the affidavits supporting the warrant are not sufficient.

By the Court:

What do you say to that, Mr. Thompson?

Mr. Thomsposn:

If the Court please, the question of probable cause rests upon what an experienced law enforcement officer thinks, and the inferences he draws from the facts that he knows. Mr. Morris is a law enforcement officer who states that he has been engaged in enforcing the lottery laws since

1951. We feel that that would qualify him to state whether or not to his personal knowledge someone has a reputation with him or a record known to him for engaging in the business of a lottery or gambling.

By the Court:

How about the telephone records? Should you have them here?

Mr. Thompson:

If the Court please, I think not. It's a question, not of what the records show but a question of what this agent knew. The records might be subpoenaed to show that that agent is not telling the truth, that the records didn't show that, that he did no have probable cause, but the real question here today is as to whether or not this agent had probable cause to believe that that residence was being used for a lottery or to believe that Mr. Clay was engaged in an unlawful lottery business, and—

By the Court.

And that he saw the records on that occasion and that's what they showed at that time?

Mr. Thompson:

Yes, sir.

By the Court:

I'm going to let it in.

Mr. Watkins:

I want to make myself clear for the record, Your Honor. While I certainly understand the rule to be that the evidence needed to procure a warrant, it's not necessary that it be sufficient to convict, but it must be of a type

that is competent and admissible in a trial of the case, and our observation is that the officer can not rely on something that is not evidence of a form that would be admissible in a Court.

By the Court:

I'm going to let it in for whatever it is worth. I'm trying this without a jury.

Q. Will you resume?

A. Yes, sir. On the next date, June 21, 1955, Special Agent Pair, Special Agent Lewis and I met in the U. S. Attorney's office and we then appeared before the United States Commissioner here in Macon and we prepared the necessary affidavits to secure a federal search warrant. We then proceeded to Athens, Georgia, and arrived there at approximately noon,

Q. Might I interrupt you for a moment. Did you telephone anybody in Atlanta on that date, the preceding date, regarding the registration of lottery stamps?

A. I did. On June 19, while I was at home in Atlanta I did call one of the supervisors in Atlanta and asked the supervisor to have the records of the District Director checked again to ascertain whether or not Mr. Clay or any of the persons known to be associated with Mr. Clay had purchased an occupational tax stamp or was paying excise tax on wagers. I then left Atlanta and came to Macon. On the 20th we received a telephone call, or we placed a telephone call to Atlanta and asked the supervisor if those records had been checked. The supervisor said that they had been checked, and we asked who performed the actual checking. I'm not certain—I do not recollect as to whether I talked with the person in Atlanta or whether Mr. Pair talked with the supervisor in Atlanta, but we were both present in the office at the time of the call.

One or the other of us did talk. It was not considered too important to me at that particular time and I didn't make an actual note of the fact.

Q. During the course of this investigation you said you were in Atlanta on the weekend?

A. Yes, sir, my home is in Atlanta.

Q. From the time you began this investigation in June and began your surveillance were you in Atlanta just on the week ends?

A. That's the only time I was in Atlanta.

Q. Is the Director's office in Atlanta open on the week end?

A. No, sir. It was impossible for me to check these records on Sunday when I was in Atlanta. I returned to Macon on Sunday evening, arriving here at approximately 6 p.m.

Q. What was the response? Did you find out whether or not any registration had been made as a result of your telephone conversation?

A. As a result of the telephone call we were advised that Mr. du Bignon had checked the records. We then asked to speak to Mr. du Bignon and he told us verbally that he had checked the records and that neither Mr. Clay nor any of his associates had purchased an occupational tax stamp. We consulted the U. S. Attorneys at that time and they advised us to secure Mr. du Bignon's affidavit. We did so secure his affidavit.

Q. Go ahead now with the events that transpired on June 21.

A. On June 21 we secured the search warrant, as I said, and proceeded to Athens and arrived there approximately at 12 o'clock noon. After eating a rather hasty lunch we went to the location at 140 Morton Avenue and observed that the Oldsmobile automobile had apparently not arrived. We parked in a position close by from which

we could observe the Cotton—excuse me, the residence at 140 Morton Avenue. At approximately 2:20 p.m. Mr. Clay arrived in the Oldsmobile. As he drove into the driveway I was operating the Government automobile. I started the engine and followed Mr. Clay into the drive way of the residence located at 140 Morton Avenue. As we stopped the car Mr. Clay was getting out of the automobile. He got out on the—I want to make certain so I'll refer to my records—he got out on the left hand side of the automobile, and as he got out I observed that he had a paper sack in his left hand.

Q. Describe that paper sack to us, please sir.

A. It was a rather small paper sack, I would say approximately this big (indicating) this way and this big around. I'm not too familiar with the various poundages and so forth, the sizes by which they go, but it was a rather small paper sack. He was holding it at the top of the sack in his left hand. As we came into the drive way he broke and ran towards the front door. All three of us in the automobile shouted to Mr. Clay to halt that we were federal officers. Mr. Clay broke and ran just as Mr. Pair alighted from the automobile. Mr. Pair got out on the left hand side. Mr. Lewis got out on the right hand side and I got out on the left hand side.

Q. Now, pardon me for interrupting you, but had your car stopped when Mr. Clay started to run?

A. My best recollection is that we had not fully come to a stop. We were just in the process of stopping. I make that explanation for this reason. I was driving the automobile and it is my best recollection that that was the reason I was the last man out of the car.

Q. Go ahead sir.

A. Mr. Pair got out on the left hand side and Lewis on the right and during this time Mr. Clay was running for the front door. Mr. Lewis, Agent Lewis, ran up the

front steps to the house to the front door. Mr. Pair ran up the side steps to the front door and at that point they apprehended Mr. Clay there at the door. In the ensuing struggle and as they all three collided at the front door at one time the paper sack split and a part of the contents fell to the floor. Mr. Lewis picked up the contents and said "This is it". At that time Mr. Pair told Mr. Clay that he was under arrest. Mr. Lewis then took the remaining part of the sack that was still in Mr. Clay's hands from his hand. At that time I handed the federal search warrant which I had in my possession to Mr. Pair and said "I'll take the rear entrance". I then ran to the rear entrance of the house to prevent anyone from escaping thru the rear. Mr. Pair took the warrant from me and began talking as I left the scene, to Mrs. Anderson who was standing at the door.

Q. Did you see Mrs. Anderson?

A. I saw her standing at the door, yes, sir.

Q. Did you see her take any action or did you just see her there?

A. I just saw her there at that particular time, sir.

Q. Were you present when the search warrant was actually served on Mrs. Anderson?

A. I was not there when Mr. Pair attempted to present her with the search warrant, but I was there when she actually accepted service of the search warrant later.

Q. When was that, that she accepted service?

A. That was after an inventory of the items seized at the residence at 140 Morton Avenue had been completed. Mrs. Anderson at that time did accept service of the search warrant.

Q. How long have you personally known Will Parks Clay?

A. I have personally known Will Parks Clay since about, I would say, 1953.

Q. Have you ever had occasion to determine personally whether or not Will Parks Clay has a record for operating lotteries or for violations of the federal or state lottery laws?

A. I have sir.

Q. And what was the finding?

A. I found that the record shows two convictions in state Court for lottery, if my memory serves me correctly. I'm certain that there are convictions in the state Court for operating a lottery.

Q. Of your own personal knowledge do you know whether he has a reputation as a lottery operator?

A. Of my personal knowledge he does.

Mr. Watkins:

Your Honor, at this time we want to object to the testimony that according to his recollection the movant, Clay, had been convicted on, he thinks, two occasions in the state Court for operating a lottery, on the grounds, first, that it is irrelevant and immaterial. Secondly, the record of the convictions would be the highest and best evidence. We don't think it's admissible at all. Thirdly, we object to it for the further reason that no time is stated as to when any conviction, if any, had occurred, and therefore it wouldn't have any probative value unless the time—as far as probable cause is concerned—it wouldn't have any probative value.

By the Court:

I'll hear from you, Mr. Thompson, on the last ground of the objection, as to the time element.

Mr. Thompson:

If the Court please, again the Government's position is this. We contend that all of the facts that are within

the officer's knowledge which would tend to indicate that the defendant is a violator of the law, and was on the particular date he was arrested a violator of the law, would enter into a determination of whether or not in that officer's mind, based upon his response as an officer, there was a crime in process of being violated at the time Mr. Clay was arrested. That, in turn, would establish whether or not the arrest was lawful.

By the Court:

In the officer's mind and knowledge at what time?

Mr. Thompson:

At the time he made the arrest, sir.

By the Court:

Well, you had better make that clear. I think the objection goes to that.

Mr. Watkins:

Our objection on that score, Your Honor, is that in no event is the evidence that he attempts to give admissible, for the reasons stated; and secondary to the broad objection, it might have been fifty years ago, according to his search of the records. I don't know what he found. He hasn't shown when that occurred, and it wouldn't have any bearing on at all on this question of probable cause for his arresting Clay on June 21, 1955 unless it was related in point of time closely enough to establish probable cause. And, moreover, Your Honor, just to say that he had a record of convictions in the state Court for lottery, he might—anyone might be charged and convicted under the state statute on any sort of a scheme or device for hazarding money, could be a slot machine, pin ball, or anything for the hazarding of money, playing

cards, maintaining some kind of a skin game, would have nothing in the world to do with a bug operation that they are talking about here. Or they might have sold some chances on an automobile like you see out here today, where they are doing it, and that's a scheme for hazarding money to get something of value. You could be charged and convicted in the state Court under the lottery statute for doing that and it wouldn't have any bearing at all on whether the person so charged and convicted in the state Court was guilty in this officer's mind of carrying on a bug lottery on a given date.

By the Court:

Well, Mr. Thompson, if you prove that he had this knowledge at the time that he went to 140 Morton Avenue on the date in question I'll let it in.

Q. When did you make this check of the records, Mr. Morris?

A. I don't recall off hand the date. It was during the process of the investigation that we checked the criminal records on every person that was suspected of being involved in this investigation.

Q. Was that prior to or subsequent to the arrest?

A. It was prior to the arrest.

By the Court:

I overrule the objection, Mr. Watkins.

Cross Examination.

By Mr. Watkins:

Q. Mr. Morris, are you familiar with the items that were taken from the house up there in Athens on June 21?

A. I am, yes.

Q. Did you actually make the return? I'm showing you a copy of that return. I don't know whether your initials are on it or not.

A. No, sir, that's Mr. Pair's initials and Mr. Lewis'. I did not make the return.

Q. But you are familiar with it?

A. I'm familiar with the items that were taken up there, yes, sir.

Q. Now what was the last date prior to June 21, 1955 that you saw Will Parks Clay in Macon?

A. I'll have to refer to my notes quickly. (Looking thru notes.)

Q. Wasn't it on the 16th of June?

A. No, sir, the last date I personally saw Mr. Clay in Macon was on the 17th of June at approximately 12:44 p.m.

Q. And you saw—did you see him in Athens after that, prior to the 21st of June?

A. I did not see him in Athens after that date until the date that we made the arrest.

Q. In other words you saw him no more after the 17th of June until you made the arrest there in Athens?

A. Yes, sir. The 17th of June was on Friday.

Q. And when was the arrest made, on Tuesday?

A. That is correct sir.

Q. Now Mr. Morris, you three officers didn't follow Mr. Clay up to Athens on the day of this arrest, did you?

A. No, sir, we did not. We were there in advance of Mr. Clay.

Q. What time did you leave Macon that morning?

A. I can't tell you what time we left Macon, but I do know that we arrived in Athens at approximately 12 o'clock noon. I would assume from that that we left here at approximately 10 o'clock.

Q. Your purpose in going up there was to arrest him if he came up? And to search the house, of course?

A. Our primary purpose was to search the house.

Q. And you also had the purpose of arresting him if he should arrive?

A. I would say if the circumstances had warranted it that would have been our purpose.

Q. What time did you get out to Morton Avenue?

A. Approximately 1 o'clock.

Q. And how long was it then until you arrested Mr. Clay?

A. Mr. Clay's arrest occurred shortly after 2:20 p.m.

Q. Then you stayed there from 1 o'clock until 2:20, something like about an hour and twenty minutes?

A. Between an hour and an hour and twenty minutes.

Q. What were you waiting for?

A. Waiting to see if he arrived at the usual time during the usual lottery hours.

Q. Then you went up there to arrest Clay.

A. If the circumstances had warranted, yes, sir, and they did.

Q. Well, why qualify your answer, Mr. Morris? You went up there to arrest him that day and that's why you waited an hour and twenty minutes on him, isn't it?

A. I would say yes.

Q. Then that was in your mind when you left here, to go up there and wait for him and arrest him when he got there and search the house and see what was there?

A. That's correct sir.

Q. Why didn't you get a warrant for his arrest?

A. We did not consider, and I did not consider, that we had sufficient evidence to obtain a warrant for his arrest. We had a chain of circumstances that indicated that he was engaged in the business of accepting wagers.

Q. Well, you say you had seen him with a sack just like this sack you arrested him with out here in Macon sometime before this, didn't you?

A. Yes, sir.

Q. You remember what day that was?

A. That was on the 15th.

Q. That was only six days before this. And you didn't think you had enough evidence to arrest him then?

A. No, sir, I did not.

Q. While he had that sack in his hand on the 15th?

A. I did not.

Q. But in any event you didn't get a warrant for his arrest or a warrant to search his car because you did not think you had enough evidence to authorize the commissioner to issue you such warrants?

A. We considered that we had sufficient evidence at the time that we obtained the warrant to search the premises at 140 Morton Avenue. When Mr. Clay alighted from the car and fled toward the front door of the house we then considered that we had sufficient evidence to arrest Mr. Clay.

Q. Well, why were you waiting for him then?

A. I believe it is customary, Mr. Watkins, to make an investigation of lottery operations during lottery hours. We were waiting until the proper time to search the premises because we believed we had probable cause to believe that there would be lottery evidence on the premises during those lottery hours.

Q. You mean after—

A. After Mr. Clay arrived there with the lottery evidence.

Q. I see. You didn't think it would be there until he got there?

A. We did not think that it would all be there until Mr. Clay arrived there.

Q. Then you were not able to describe in your affidavits to the Commissioner what you expected to find in the house?

A. My affidavit to the Commissioner stated that Mr. Clay did not have a stamp and that on June 20 I had searched the records of the telephone calls made from that location—

Q. Well, you have already testified that youall didn't expect all of this lottery evidence that you say you found to be there until after Clay arrived?

A. Yes, sir.

Q. Therefore, you, nor any of the other officers who made affidavits before the Commissioner, were in position to say with any particularity what would be there, or what they expected to find in the house?

A. From our observations of that particular property we expected to find evidence of lottery violations in that premises.

Q. You were really just kind of making an exploratory search and hoping that you would catch Clay coming there with some lottery tickets. Wasn't that it?

A. No, sir, that was not it.

Q. Youall seized a strong box with some insurance policies, didn't you?

A. We seized a strong box, yes, sir.

Q. Now they are not necessary in the operation of a lottery, are they, the insurance policies?

A. No, sir, they are not.

Q. Well, why did youall seize them under this warrant to search for lottery?

A. We seized a rather large box that contained a numerous amount of records, papers, items that it would be physically impossble to inventory at that particular time. Mr.—

Q. Did—excuse me.

A. Mr. Clay was requesting that we take him immediately before the Commissioner and that he be allowed to summons his attorney in order that he would not have to spend the evening in jail, and we took the box, gave a receipt for the box and at a later date inventoried the box and returned the box to Mrs. Anderson who had claimed the box.

Q. Did you return the contents to her?

A. We returned the box intact to her on that date.

Q. With the—

A. With the contents in the box.

Q. With the insurance policies?

A. Yes, sir.

Q. And the notes receivable?

A. All items that were in the box when the box was taken were returned to Mrs. Anderson on a later date.

Q. What about the $4,000.00 in money?

A. I would have to check the files to ascertain that.

Q. I want you to look at the return on the warrant.

A. Yes, sir.

Q. And those items that I call to your attention marked, one strong box containing miscellaneous insurance policies and notes receivable, and two bundles of money, a certain number of bills amounting to $4,000 is what it is.

A. Well, from my experience in lottery investigations I have found that money is one of the items of evidence in a lottery investigation.

Q. I know, but doesn't this warrant say books, records, papers, documents and memorandum? Does it say anything at all about money?

A. Sir, you have the warrant.

Q. Or insurance policies? I'm exhibiting it to you.

A. It does not say.

Q. Why did youall seize a woman's insurance policies and notes.

A. We seized the box with all of the contents because it was physically impossible for us at that particular time to inventory that box and ascertain whether or not the items contained therein were evidence that pertained to this investigation or whether they were not.

Q. And is it your idea that the money and the insurance policies and those promissory notes have been returned to Mrs. Anderson?

A. Sir, I personally delivered those things to Mrs. Anderson.

Q. Did you get a receipt?

A. I have a receipt for it.

Q. Let me see it.

A. I don't have the receipt with me, sir.

Q. Were you present when that stuff was returned?

A. Yes, sir, I was present. Perhaps I can—

Q. Could you be mistaken about it?

A. No, sir. I think I can clear up this misunderstanding, with the Court's permission. There are also outstanding several warrants—it is my understanding that there are warrants outstanding for assets of Mr. Clay under an income tax investigation.

Q. That's a warrant of distraint?

A. Yes, sir.

Q. Well now, I see where you are driving to. Did you return this property to Mrs. Anderson and then levy distraint warrants?

A. I did not levy; officers in the collection division did.

Q. Were they present when the property was returned to her?

A. They were present.

Q. And where did that occur?

A. 140 Morton Avenue in Athens, Georgia.

By the Court:

Does this relate to the admissiblity of this in evidence in this case?

Mr. Watkins:

This is a motion, Your Honor, for the return as well as the suppression of property seized under this search warrant.

By the Court:

He says he returned it and got her receipt for it. I just don't want to take any more time than is necessary in this.

Mr. Watkins:

I just wanted to find out where all that had gone, because we didn't know.

A. My best recollection of the currency, Mr. Watkins, is that the currency was turned over to the District Director and was not returned to her.

Q. All right sir. In other words it was seized under this warrant, and turned over to the District Director?

A. That's my best recollection. I would have to refer to certain records in order to ascertain whether or not that is true, but that's my recollection.

Q. Now you couldn't have seen anything that might have been in the sack that you testified Clay was carrying at the time he got out of his car and started in the house, could you?

A. I could not see into the sack, no sir.

Q. And it was necessary for anybody who wanted to see what was in the sack to get it and open it and look into it?

A. That would be true.

Q. You couldn't tell?

A. Yes, sir, under ordinary circumstances—

Q. You could not tell what was in that sack from just looking at it could you?

A. No, sir, until the sack did burst. When the sack did burst a part of the contents spilled to the floor.

Q. Was that when he and you and the other officers were—

A. Not I, sir. I was not one of the officers—the other two and Mr. Clay met at the door.

Q. Did they kind of slam up against the wall in a scuffle and the sack broke? Was that it?

A. I'm not certain as to exactly how that occurred.

Q. Did you see it occur?

A. I saw the articles fall from the sack. I saw Mr. Lewis pick up the articles.

Q. Weren't they in sacks, too?

A. I don't recall as to whether or not they were all in sacks, or whether some of them may have been in envelopes.

Q. Didn't you testify on direct examination that in the struggle there at the front door they all sort of fell up against the wall and that's when the sack broke?

A. I would say that the momentum of all three persons running towards the door carried them up against the door and during that momentum the sack did burst and the contents did spill from the sack, or part of the contents did spill from the sack.

Q. Now was this drive way on the left or the right side of the house at 140 Morton Avenue as you faced it from the street?

A. As you faced it from the street the drive way was on your left hand side.

Q. And how far back from the street was the house situated?

A. My best recollection is that it's between 50 and 60 feet back from the street.

Q. And was his car parked up in the drive way?

A. His car was parked in the drive way.

Q. And did youall turn in the drive way and proceed up and park back of him?

A. We did. I did. I drove the car.

Q. And how far back from the street was the house steps there?

A. Approximately 12 to 15 feet from the drive way.

Q. That was right next—

A. Yes, sir, Mr. Clay ran a distance, from his car to the front door, a distance of approximately 25 feet.

Q. Five or six steps would you say?

A. I would say more than that.

Q. 25 feet?

A. 25 or 30 feet. I would say 8 or 10 steps, something of that sort. I didn't count the steps, Mr. Watkins.

Q. Now this drive, was it adjacent to the house?

A. It was adjacent to the house, yes, sir, and extended on into the back yard.

Q. It was the drive way that led into this residence there?

A. Yes, sir.

Q. Your car, the goverment car, was parked on that drive way too?

A. Yes, sir.

Q. All the way in?

A. Yes, sir.

Q. Right directly behind Clay's car?

A. Yes, sir.

Q. And you were on the premises there when you finally stopped?

A. Yes, sir.

Q. How did you get into the house? From the back door?

A. I went around to the drive way and thru the drive way and went to the back yard, walked to the back door. By the time I got there—there's a hall that extends thru the center of the house—I could see the persons in the living room, and I walked thru the rear of the house. There was a colored maid—

Q. How did you get in the door?

A. The door was open.

Q. You just walked in?

A. I just opened the screen door, if there was a screen door in deed there, and walked in.

Q. Nobody let you in. You just walked in?

A. Yes, sir, I did. I could see that Mr. Pair and the other persons had gained entrance to the house in the front.

Re-Direct.

By Mr. Thompson:

Q. Mr. Morris, how long have you known Will Parks Clay?

A. I first became acquainted with Mr. Clay during the trials, in Macon. I had seen Mr. Clay in the hall way here, and he had been pointed out to me and I had spoken to Mr. Clay breifly in the hall on several previous occasions. My best recollection is that that was sometime during 1953.

Q. And how long have you been familiar with his reputation?

A. From the time I first met him.

Mr. Watkins:

We think that question is improper, Your Honor. He ought to ask him if he knew his reputation in this community.

By the Court:
Unless he testified that on direct?

Mr. Thompson:
If the Court please, he did testify that on direct.

By the Court:
I thought he did.

Q. And how long have you been familiar with Mr. Clay's reputaiton as a lottery operation.
A. Since the time—

Mr. Watkins:
I don't think he has laid the foundation to qualify this witness to say what his reputation is, Your Honor.

By the Court:
Well, let's don't rely on our recollection as to what he testified on direct. Ask him over.

A. My best recollection is that I met Mr. Clay during 1953. At the time I met Mr. Clay I spoke with him briefly in the hall and I learned from other officers that he was engaged in the lottery business at that time.
Q. That's the basis of your—
A. That was the original basis for it, yes, sir.

Mr. Gautier:
Your Honor, we want to object to what this witness may have learned from other officers. The question is what this man's general reputation is and whether he was generally reputed in the lottery business, and not that he might talk to a particular class of persons and get their opinion about his reputation, but it's the general reputation.

By the Court:

Well, is that the question here? The question here is probable cause and wouldn't it be admissible even if one officer told him he was in the lottery business? What do you say to that?

Mr. Watkins:

We don't think so, Your Honor.

By the Court:

I overrule your objection and let it in for whatever it may be worth as to whether or not this officer had probable cause to believe that he was committing a felony in his presence, violating the law.

Mr. Thompson:

That's the only reason for which we offer that testimony.

(Witness excused.)

MR. RICHARD E. LEWIS, being called by the Government, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. Lewis, will you state your full name, your residence address and your occupation, please sir.

A. Richard Edward Lewis, 233 Corbin Avenue, Macon, Georgia, Apt. A-1. I'm a Special Agent with the Intelligence Division, Internal Revenue Service of the United States Treasury Department.

Q. Is that the same occupation as followed by your colleagues Mr. Pair and Mr. Morris?

A. It is sir.

Q. How long have you been a special agent with the Internal revenue service?

A. A little over seven years.

Q. What is the nature of your present assignment? What type investigations do you make?

A. I investigate charges of alleged fraud of all taxes with the exception of alcohol and tobacco.

Q. Does that include alleged fraud of lottery and wagering taxes?

A. It does sir.

Q. And how long have you been assigned to that type investigation?

A. Since November, 1951, sir, when the law became effective.

Q. Do you know Mr. Will Parks Clay?

A. I do sir.

Q. How long have you known him?

A. Since June 21, 1955.

Q. You have known him personally since then?

A. Yes, sir.

Q. Have you know him on sight prior to then?

A. Yes, sir.

Q. How long have you known him to see him?

A. Since March or April, 1955 when I first came to Macon, sir.

Q. You performed an investigation during 1955, June of 1955, relative to Will Parks Clay, did you not?

A. I did sir.

Q. Will you state from the beginning of that investigation just exactly what the nature of it was and the activity that you participated in?

A. On June 15, 1955 I went to Athens, Georgia, where I placed under surveillance the premeises at 140 Morton Avenue. At approximately 2:41 p.m. I saw Mr. Clay

drive down Morton Avenue from Milledge Avenue and turn into the drive way at 140 Morton Avenue.

Q. What was he driving?

A. A black 1955 Oldsmobile 98, four door sedan.

Q. What license tag?

A. No license tag visible, sir.

Q. Go ahead.

A. He got out of the car and walked around the back of it and opened the right rear door. Two children, two small boys, greeted him and I overheard them call him "Daddy". He gave one boy a carton of approximately one foot cube in size and the other what appeared to be a book, a small book of most any description, novel or any other type book. Then he took a wicker basket approximately 18 inches by 9 by 6 inches from the car and the two children and Mr. Clay went into the house at 140 Morton Avenue.

Q. From your point of observation could you tell whether there was anything in the basket?

A. I could not.

Q. Was that a common, small type market basket with a handle?

A. Yes, sir. Next day, on June 16, 1955, I again placed the premises at 140 Morton Avenue under surveillance and at 2:28 p.m. I witnessed Mr. Clay driving a 1955 black Oldsmobile four door sedan, with no license plate visible, down Morton Avenue from the direction of Milledge. He turned again into the drive way at 140 Morton Avenue. He got out of the car and walked around the back again and opened the right rear door, took from the car a newspaper and a brown paper bag of approximatiely 10 or 12 pound size and carried them in the house. This paper bag was folded at the top. He held it in his hand, and it is a size and type commonly used by lottery operators.

Q. Go ahead. That was on the 16th?

A. Yes, sir.

Q. And what did he do after he alighted from the car?

A. He removed these articles that I described, the newspaper and the paper bag, and went into the house.

Q. Now what was the next phase of your investigation?

A. On the next day, June 17, 1955, I again placed the premises at 140 Morton Avenue under surveillance. At 2:44 p.m., approximately, I witnessed Mr. Clay drive down Morton Avenue from the direction of Milledge in a black, 1955 Oldsmobile four door sedan with no license plate visible, turn into the drive way at 140 Morton Avenue, alight from the car, walk around to the right rear door and remove a newspaper which he gave to a small girl who greeted him. He took a paper bag slightly smaller than the one I had seen on the previous day, approximately an 8 pound size and sheets of white paper and walked into the premises of 140 Morton Avenue. This bag again was folded at the top and carried in his hand.

Q. Did he carry that in his hand, under his arm or how?

A. In his hand.

Q. Both hands or one hand?

A. One hand, sir.

Q. And what size were the white papers you saw?

A. 8½ by 10 approximately, sir.

Q. Note book size?

A. Just general note book size.

Q. That was on June 17?

A. Yes, sir.

Q. Mr. Lewis did you have occasion to come in contact with or to observe Mr. Clay from that day until June 21?

A. I did not sir.

Q. You did not see him?

A. No.

Q. When was the first time you saw him on June 21?

A. At about 2:40 p.m. sir, in Athens, Georgia, at 140 Morton Avenue.

Q. Well, speak out a little louder please, and tell us just exactly what that occasion was and what transpired then.

A. Special Agent Morris, Pair and I had placed the premises of 140 Morton Avenue under surveillance and at approximately 2:40 p.m. we witnessed Mr. Clay drive down Morton Avenue from the direction of Milledge, turn into the drive way at 140 Morton Avenue. We immediately pulled into the drive way behind him; approximately 30 to 45 seconds subsequent to his turning into the drive way, we turned into the drive way.

Q. Was he driving the same car again?

A. Yes, sir. I was sitting in the right front seat. I got out the right front, saw that Mr. Clay was getting out from the left front door of his automobile. Mr. Pair and Mr. Morris got out our car on the left side. Mr. Clay turned around and saw us and started running toward the direction of the house. Mr. Pair called for him to stop, said, "We are federal officers; stop, Mr. Clay", or words to that effect, similar to that. I don't recall exactly.

Q. Did he stop?

A. He did not sir. He ran toward the door. I ran toward the porch and went up the front steps. I saw out of the corner of my eye that Pair and Morris were running behind Mr. Clay, and Mr. Pair and I got to the porch approximately the same time as Mr. Clay. I grabbed Mr. Clay by his left arm and Mr. Pair got him by the right arm at practically the same moment. As we were running toward the porch I saw Mr. Clay had a paper bag of a similar description and size as the ones I had witnessed him taking to the house on Thursday and Friday of the previous week.

Q. Was that the first time you had seen the bag in his hand on that day?

A. As we were running for the house, yes, sir.

Q. You got out of the right hand side of your car?

A. Yes, sir.

Q. Which side of the car did he get out?

A. The left, sir. I was not able to see his torso as he was getting out, in the position to get out, sir. As we grabbed Mr. Clay there was a slight struggle and the bag which he was carrying split. He had it in his hand folded at the top. There was a smaller bag within the larger bag, which fell to the floor. I picked that bag up, looked inside and said "This is it". I then took the bag, the larger bag from Mr. Clay and told him he was under arrest. We then concentrated on the front door. We noticed that Mrs. Anderson and her daughter, or a child who was identified as her daughter, were standing at the front door inside of the living room.

Q. What do you mean, you concentrated on the front door?

A. We had a search warrant—Mr. Morris and Mr. Pair had a search warrant to search on the premises.

Q. And Mrs. Anderson was standing in the front door with a small child?

A. Yes, sir.

Q. What happened then?

A. I first noticed that Mr. Pair had the search warrant and he offered it—we first asked Mr. Clay if he lived there, sir. He stated that he did not. We then asked Mrs. Anderson if she lived there, and she said she did. I say "we"—Mr. Pair did all this questioning.

Q. Mr. Clay denied that he lived there?

A. Yes, sir.

Q. Go ahead.

A. Mrs. Anderson admitted that she did live there, and Mr. Pair produced his pocket commission, identified himself as a federal officer and showed her the search warrant. She refused to accept it and Mr. Clay told her she didn't have to accept it. Mr. Pair then pulled the screen door open and we entered and he again offered the search warrant to Mrs. Anderson and she did not accept it. He then placed it on the TV set in the living room. When we got in I noticed that Mr. Morris was coming from the rear with a colored woman who identified herself as a maid, and we asked the maid, Mrs. Anderson and the daughter to sit in the living room. Mr. Clay was told to sit in the living room. I remained with them while Special Agents Morris and Pair began the search of the premeises.

Q. Now what did you find in the premises?

A. I personally, sir?

Q. Yes, sir.

A. After they had spent considerable time searching the premises Special Agent Pair came back to the living room and he and I, or he in my presence, searched Mr. Clay and removed certain cash and checks from him. Later he and I went into the front bed room where we searched again, the same room where the binoculars, adding machines and other—where I was told those items were found, and we found a strong box under the bed. Mrs. Anderson identified that as hers. That is the only item which I found in the house sir.

Q. These other items that you found in the house, did they explain to you anything about them, make any statement with regard to any of them?

A. The items that Special Agent Morris and Pair found?

Q. Yes, sir.

A. Yes, sir. Concerning the ten cartons and the partial carton of lottery tickets, they stated that they must have been left there by the previous owner of the house. They—er—let's see. They denied the ownership of the binoculars, of the calculators, and I believe that Mrs. Anderson stated that the certain check books containing canceled checks signed by Mrs. Clara Willis belonged to her mother and a bank book with the same name written on it also belonged to her mother.

Q. Were you armed, Mr. Lewis?

A. Yes, sir.

Q. Were the other two officers with you armed?

A. Yes, sir.

Q. What kind of arms did you have?

A. Pistols, sir.

Q. Did you pull your pistol at any time during your chase or serach of Mr. Clay?

A. No, sir.

Q. When was the first time you pulled your pistol during the whole affray?

A. I do not recall pulling my pistol at all sir.

Q. You did not pull your pistol at all?

A. No, sir.

Q. When you were running across the front yard chasing Mr. Clay did you have your pistol in your hand at that time?

A. No, sir.

Q. Did you ever threaten to shoot Mr. Clay or anybody else?

A. No, sir.

(Recessed 6:00 p.m., April 18—4:30 p.m., April 19.)

Cross Examination.

By Mr. Watkins:

Q. Mr. Lewis, I believe you stated in your direct examination that you observed the premises at 140 Morton Avenue in Athens, Georgia, on three successive days, the 15th, 16th and 17th?

A. Of June, yes, sir.

Q. 1955?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And on the first occasion that you saw Mr. Clay get there, what time was it?

A. Approximately 2:41 p,m., sir.

Q. And he had a basket, you say, in his hand?

A. Yes, sir.

Q. What kind of a basket was that?

A. A wicker basket sir. Might be described as a market basket, or a picnic basket, without a top on it.

Q. How far away from Clay were you at that time?

A. I was approximately 100 or 150 yards, sir. Something like that.

Q. Were you using any type of binoculars to make observations?

A. The first day I did not. The other days I did.

Q. And you were 150 yards away?

A. Between 100 and 150. I did not step it off.

Q. Of course you don't know—you didn't see anything that was in the basket?

A. I did not, no sir.

Q. And you don't know whether anything at all may have been in the basket as you saw him go in the house?

A. No, sir.

Q. Did he go in the front door?

A. Yes, sir. May I qualify that, sir. He walked on to the front porch and there were two doors, one leading into a bedroom and one leading into a living room. I'm not sure which door he went in.

Q. But he went in the front part of the house which opens directly on the street?

A. Yes, sir.

Q. How far is that front door from the street itself?

A. I would say 25 to 30 yards.

Q. And it was in full view of anybody who might have been passing on the street in a car or walking?

A. Yes, sir.

Q. Now on the second occasion that you were there, the 16th of June, how far were you away from Clay when you saw him stop at the house and go in?

A. The same distance, approximately 100 to 150 yards.

Q. Were you in the same place on each of the three days?

A. Yes, sir.

Q. And you said you were using binoculars on the second occasion.

A. Yes, sir, I was.

Q. Now what—was he carrying the sack that you mentioned?

A. The sack, sir, was folded down across the top and he was carrying it in his hands.

Q. In his hand or hands?

A. In his hand, sir.

Q. One hand?

A. Yes, sir.

Q. Swinging it, just walking with it?

A. Yes, sir just walking with it.

Q. You couldn't tell me what was in it of course?

A. No, sir, I could not.

Q. Now is that sack just like any ordinary sack that you get groceries in at a grocery store?

A. It had that appearance, yes, sir.

Q. Just a merchant's type sack to put things in for customers when they come in a store and buy something?

A. Yes, sir.

Q. And you, of course, could not, even with your binoculars, see anything that might have been in the sack?

A. No, sir.

Q. And on the third occasion did you see Clay with binoculars?

A. Yes, sir.

Q. And was there anything unusual about anything you saw in his hands at that time?

A. He had another bag, sir, of a—

Q. Similar to the one you saw the day before?

A. Yes, similar to the one I saw the day before.

Q. Of course, he could have had some sandwiches or some merchandise of any sort in it. You just don't know what was in it, do you?

A. I do not, no, sir.

Q. Now on the 21st—you did not see Clay again, I believe you said, until the 21st of June when he was arrested?

A. That is correct.

Q. Now are you the officer who took the sack that Clay was carrying from him on the 21st?

A. I am, sir.

Q. Do you remember that you testified before the Commissioner back in June of last year, June 28?

A. Yes, sir I do.

Q. And do you recall that at that time you testified that you took the sack and its contents from Clay's hands?

A. I recall stating that I took the sack from his hand, yes, sir.

Q. I'll ask you to listen when I read from the record of that testimony here, reading from page 12 and 13: "Q. Who actually placed him under arrest?" And that was speaking of Clay. You remember what your answer was?

A. Well, I recall sir, that—as to that particular question I do not, sir, but I recall that I testified that I placed Mr. Clay under arrest and that Special Agent Pair and I simultaneously stopped him and placed him under arrest.

Q. Well, your answer was, "I did, sir." This was your direct examination by Mr. Davis, I believe.

A. Yes, sir.

Q. Next question: "You did? You personally placed him under arrest?" Your answer was: "Yes, sir." You recall that?

A. Yes, sir.

Q. Next question: "Who got any items from his hands?" You remember your answer was, "I did, sir." You did?

A. Yes, sir.

Q. Question: "You, yourself?" Answer: "Yes sir." The next question is: "Do you have what you got from his hands?" And your answer was: "I do, sir." Question: "What did it consist of, Mr. Lewis? I'll ask you this: has that been continually in your posession since that date?" Your answer was: "It has" sir. It contains several packages of lottery numbers tickets—the original ticket that is generally found in posssession of the operator of a lottery game". You remember that answer?

A. Yes, sir it's familiar.

Q. Now what I'm getting at, Mr. Lewis, is you said absolutely nothing in that testimony about the sack being slit open and the lottery tickets falling out on the floor of the porch. Your testimony there seems to indicate clearly that you took the sack from his hands, opened it

up and found in the sack these bundles of lottery tickets. Now isn't that the truth of how the thing happened?

A. No, sir, that's not the truth of how it happened.

Q. Well, you insist now then that the sack broke open?

A. Yes, sir the sack did break open.

Q. Well, did it break open until you officers rushed him and touched him physically?

A. No, sir, it did not.

Q. It was the physical tussle then that the sack broke open?

A. I couldn't describe it as a tussle, sir, but it was when we grabbed Mr. Clay.

Q. The force of the impact of the officers against Cla and against the wall of the house and all caused the sack to break open. Isn't that right?

A. That's my opinion, sir.

Q. You didn't mean to intimate to the Court then that the sack just inadvertently broke open and the lottery tickets fell out and youall saw them before you arrested Clay?

A. I did not, no sir.

Q. I see. Now did you help search the house, Mr. Lewis? I mean Morris.

A. Lewis is correct sir.

Q. I get youall mixed up.

A. Yes, sir, I did help.

Q. Why did youall seize the two pairs of binoculars that were found in the house? They were not described in the warrant, were they?

A. We seized the binoculars, sir, because we believed that they were materialus, paraphernalia for furtherance of Mr. Clay's lottery operations.

Q. Well now, this warrant—I exhibit to you the copy furnished me by the Commissioner—doesn't refer to any binoculars, does it?

A. It does not sir.

Q. And it doesn't refer to any insurance policies, does it?

A. No, sir, the insurance policies are not listed there.

Q. And it doesn't refer to any money?

A. No, sir, money is not listed.

Q. Now—but you did seize the binoculars that you found in the house and you did seize the insurance policies that you found in the house, didn't you?

A. I understand there were insurance policies in the strong box, sir.

Q. And you did seize $4,000 in money that was in the strong box?

A. Yes, sir.

Q. All of that was seized under this warrant here?

A. Yes, sir.

Q. And none of it is mentioned in the warrant or described in the warrant?

A. No, sir.

Q. No money, no insurance policies and no binoculars. Now, Mr. Lewis, had you ever, from June 6, 1955 to June 21, 1955, followed Mr. Clay from Macon to Athens?

A. No, sir; I had not personally.

Q. Well, did you officers know or believe that Clay was going to be in Athens on June 21 when youall left here that morning?

A. Yes, sir, we did.

Q. And you had in mind that you would arrest him when he got there, didn't you?

A. If, after a search of the car, we found the lottery paraphernalia that we expected to find, yes sir.

Q. Well, when you did see him all of you, or some of you, called to him to halt, that you were federal officers, didn't you?

A. Yes, sir.

Q. You tried to detain him when you saw him?

A. Yes, sir.

Q. And that was before you searched his car?

A. Yes, sir, it was.

Q. Then you intend to search his car when you left here, didn't you?

A. Yes, sir.

Q. And you intended to arrest him?

A. If the—

Q. Or detain him long enough to search his car, didn't you?

A. We would have had to have detained him long enough to search the car, yes sir.

Q. Yes, sir, you would have had to hold him to search his car, and then you intended to search him too?

A. Search him, sir?

Q. Yes, sir.

A. No, I had no intention of searching Mr. Clay unless we found lottery paraphernalia in the car, or with his permission.

Q. But as it turned out you did arrest him and search him before you ascertained, or before you searched the car?

A. Yes, sir, that's correct.

Q. And with all that in mind, Mr. Lewis, you did not—none of you three officers on that particular day made any effort or suggestion about getting a search warrant or an arrest warrant respecting Clay's car or Clay himself from the Commissioner?

A. I recall no suggestion, sir. I certainly had no intention to.

Q. You just were going to get any warrant to arrest him and no warrant to search his car. You had no idea of doing that?

A. No, sir. We felt we had probable cause to search his car.

Q. Any time you saw him?

A. No, sir.

Q. That day?

A. If he followed the pattern that we had established through our surveillance, we thought we would have probable cause, if he arrived there during lottery hours at 140 Morton Avenue.

Q. And that was then, er—even tho you had not seen him with a lottery ticket since you started this particular investigation?

A. I had not seen him with a lottery ticket; that's true.

Q. Then what was it based on, just the confidential information you had that you testified about when Mr. Thompson asked you? Just that alone?

A. No, sir. It was based on the confidential information and the surveillance that we had had Mr. Clay under over a period of time, the pattern that he had established in arriving in Athens and taking the bag into the house; the fact that the investigation in Athens showed that he was living there under the name of Anderson and reported that he worked for the Atlantic Steel Company.

Q. Now, is there any reason in the world that you know of why you shouldn't at this time reveal the identity of your confidential informer?

A. Yes, sir.

Q. What reason is there?

A. I have promised the confidential informer that I would never reveal his identity to anyone.

Q. Did he come to you or did you go to him initially?

A. I went to him, sir.

Q. Did you make him any promises?

A. I did not.

Q. Other than that you wouldn't reveal the source of the information that he gave you?

A. That is the only promise I ever made to him, sir.

Q. Now, of course, you didn't get him to come before the Commissioner and make any affidavit for the purpose of getting this search warrant?

A. No, sir, that would have been violating our confidential relationship.

Q. Now is the fact that you promised him you wouldn't reveal the identity of the person from whom you are getting this information the only reason that you don't want to reveal it?

A. Yes, sir, it certainly is.

Q. That's the only reason?

A. Yes, sir.

Q. Did the confidential informant give you any reason why he didn't want his identity known?

A. I do recall that he did, sir, but it is a general practice with me as an enforcement officer to promise each confidential informant that I will not disclose his identity.

Mr. Thompson:

If the Court please, the Court has ruled that the officers are not required to disclose the source of their information. The questions that are now being asked and the questions that they are leading to obviously will necessarily reveal the source of the information by revealing the basis of it, and the reasons that the informant wanted to keep his identity concealed.

Mr. Watkins:

I think on cross examination if we can discredit confidential information without violating your ruling as to revealing the identity we are entitled to do it.

Mr. Thompson:

I submit that in order for the witness to fully state the reason that the informant would not have his name revealed would reveal at least his status or relation to the matter.

By the Court:

Well, it has not so far, but if it does you renew your objection because I would not let Mr. Watkins try to identify the informer.

Mr. Watkins:

Well, I certainly don't intend to. I heard Your Honor's ruling and I don't intend to.

Mr. Thompson:

I'm aware of that. I submit that it's already encroached upon that. The witness has some difficulty answering the questions becouse of the sensitiveness of it. It's getting rather close to his source.

By the Court:

Well—

Mr. Thompson:

I'll make objection to the questions as they are asked.

By the Court:

If it goes any further. I don't think he's identified him so far.

Q. Well now, has the confidential informant ever been convicted of a felony?

A. Not to my knowledge, sir.

Q. Well, have you ever heard of his being convicted?

A. No, sir, I have not.

Q. Had you ever made any investigation to determine whether he was?

A. I have not sir.

Q. You never have?

A. No, sir.

Q. Then you just don't know?

A. That's right. I do not know.

Q. He may or he may not have. You are not in position to say?

A. I have been told that he has not sir.

Q. Well, I asked you if you had made and inquiries about him.

A. No, sir, I have not. I beg your pardon, I have not checked his criminal record, sir. I did not make any investigation.

Q. That's what I wanted to get at, Mr. Lewis. Just how long have you known him? How long had you known him prior to the date on which he gave you the information that you relied on?

A. I had only known him about one month, sir.

Q. Do you know that informer's reputation for violating the federal or state liquor laws or wagering tax laws or state lottery laws?

Mr. Thompson:

If the Court please, I object to that question on the same ground I stated a moment ago. By a system of elimination Mr. Watkins is very astutely reaching the point where the man might be identified.

Mr. Watkins:

I can assure this Court and Counsel for the Government that I am not trying to find out who this man is, but I think this movant, these movants, are entitled to know from a witness who says that he had confidential informa-

tion that was reliable, from a reliable source, and if he turns around and says I haven't known this person but a month, haven't checked his criminal record, I think this Court can consider that in determining whether that confidential informer was sufficiently reliable to permit these officers to by-pass a warrant, having every opportunity to get it, and go up there and wait until the man came and then arrest him.

By the Court:

I don't know, Mr. Watkins. Let's suppose that the person had been a former partner of your client and let's suppose he's just as bad as your client, but—

Mr. Watkins:

My client isn't bad.

By the Court:

Or as your client is reputed to be, (laughter) as your client is charged with being, and that they had fallen out, and such person went to this agent and told him, "Now, you know I'm in the lottery business myself and I have been in it." I'm just supposing. "But he ain't done me right, and I want to get even with him", wouldn't that agent be within the realm of reason and be justified in believing that—

Mr. Watkins:

Judge, that's not the point. I respectfully say that Your Honor is entitled to know as much as the officers know, but you are not entitled to know—

Mr. Thompson:

I—

Mr. Watkins:

—you are the one who has the responsibility of determining whether this man is right in his opinion.

By the Court:

Well, I'm willing to take this man's word for it. If he says he believed the information, particularly if he's checked up on it and found it to be true in some instances, and that the somebody who told him that, whoever it was, never had been convicted of a felony, I'm willing to take his word for it that he relied on him. I don't want you to undertake to disclose the identity of the informer by any elimination process.

Mr. Watkins:

Well, we're not. I don't even care about knowing who it is. I think tho', as I stated,—

Mr. Thompson:

I would like to state, if the Court please, I was not accusing Counsel of doing anything underhanded. I think he understands that, but there are other people here in the Court room and this is a public record being made.

Mr. Watkins:

My point is, and for the record's sake I want to repeat it without undue argument, that we have a right to prove, without showing identity, the circumstances surrounding the informant as far as we may in order for this Court to be as fully aware as the police can be, without violating the rule, of the character or type of person that they were relying on.

Q. Do you personally know what was done with the insurance policies and the money, Mr. Lewis, that was seized?

A. Pardon me. Did you intend to say binoculars?

Q. No, I said the insurance policies and the $4,000 in money. Do you personally know what was done with that after you did seize it under this warrant?

A. No, sir, not personally.

Q. Mr. Lewis, now how far was Clay's car parked on June 21 from the door steps leading into the front of the house?

A. I would estimate 10 to 20 yards, sir, possibly about 15 yards.

Q. Yards or feet?

A. Not yards. Pardon me. I would say, sir, between 10 and 15 yards.

Q. 30 to 45 feet?

A. Yes, sir, probably closer to 35 feet.

Q. And when he got out of his car did he walk around to the front of it, in the direction toward the house, or the back of it?

A. When he got out of the car, sir, he stood beside the car and looked at our car behind it. Evidently he saw Mr. Pair, sir. He then began running toward the house, toward the front of the car.

Q. Did he turn around and run toward the house? Did he have to turn around?

A. Half turn or quarter turn, yes, sir.

Q. And how many steps did he take before he got to the house? How many would it have been necessary for him to have taken?

A. 12 to 15 I suppose sir.

Q. And then youall were on him by that time?

A. Yes, sir.

Q. And did any of you have your pistols out at any time?

A. No, sir, I didn't sir. I couldn't state for a certainty about the others, but when we arrived at the porch none of us did.

Q. Did you personally know the defendant Clay at that time?

A. I have never spoken to him, sir.

Q. You don't know whether he knew you or not?

A. I would think he did not, sir.

Q. You were a stranger, you think so far as he was concerned?

A. Yes, sir.

Re-Direct.

By Mr. Thompson:

Q. Mr. Lewis, if you identified your confidential informant would you thereafter be in a position to get further information from him?

A. No, sir, I would not.

Q. Did you say on cross examination a moment ago that you had ascertained that Clay was residing in Athens under the name of Anderson?

A. Yes, sir.

Q. And what was the employment you mentioned?

A. The Atlantic Steel Company, sir, of Atlanta, Georgia.

Q. He was reputed—had told people he worked at Atlantic Steel?

A. Yes, sir.

Re-Cross.

By Mr. Watkins:

Q. Well now, let me ask you this: did you ascertain from your confidential informant that this defendant Clay was living in Athens at 140 Morton Avenue under the name of Anderson?

A. Another confidential informant, sir.

Q. Now is it—did you learn that from him though? Had he told you that this defendant Clay was living in Athens at 140 Morton Avenue under an assumed name of Anderson?

A. The first informant, sir, that we were talking about?

Q. No, I mean any informant?

A. Yes, sir.

Q. In other words, Mr. Lewis, you knew then that Will Parks Clay lived at 140 Morton Avenue when you made the affidavits to get your search warrant for that premises didn't you?

A. Yes, sir.

Q. Of course you realize the warrant doesn't name any person?

A. Yes, I understand that.

Q. But it would have been an easy matter for youall to get a warrant to search the premises that was occupied by Will Parks Clay, wouldn't it?

Mr. Thompson:

If the Court please I think that calls for a conclusion.

Mr. Watkins:

Well maybe it does. I won't argue about it.

By the Court:

Probably does.

Re-Direct.

By Mr. Thompson:

Q. You state you knew Mr. Clay was living at 140 Morton Avenue at the time. At the time you got the warrant?

A. Yes, sir.

Q. And you knew that he was living there under the name of Anderson?

A. Yes, sir.

Re-Cross.

By Mr. Watkins:

Q. Did you know that Mattie Bell Anderson resided at the same place?

A. Yes, sir.

Q. Knew her by name?

A. Yes, sir.

(Witness excused.)

MR. FLEMING du BIGNON, being called by the Government, and having been duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. du Bignon, would you state what arrangements were made with you by Mr. Pair and/or Mr. Morris to check the records of the Director of Internal Revenue relative to the wagering occupational stamp and excise tax payments?

A. Yes, sir. On Monday, June 20, 1955, the arrangements were that I was to remain in our office in Atlanta until such time as I received a telephone call from Macon. Previously I was to check the records to see if there were any stamps in the name of Mr. Will Parks Clay, Mattie Bell Anderson, or any other names by which I knew Mr. Clay or any of his associates. This I did, and,

as had previously been arranged, Mr. Pair called me and I told him over the phone that there had not been any stamps, wagering tax stamps, issued in any of those names and there were none in Clarke County at all. After a few minutes lapse of time—I don't know, of course, what happened here in Macon—Mr. Pair came back on the phone and asked me to prepare an affidavit and get it down to him in Macon as soon as possible. That I did.

Q. You told him that from your personal examination of the records there had been no—

A. I told him that over the phone, yes, sir.

Cross Examination.

By Mr. Watkins:

Q. Mr. du Bignon, you made your affidavit on June 20, I believe, didn't you?

A. That's correct Mr. Watkins, yes, sir.

Q. And it was made before Mr. James M. Sutherland?

A. Yes, sir.

Q. In Atlanta?

A. In Atlanta. The affidavit was made in Atlanta.

Q. And you mailed it to Mr. Pair that day?

A. Yes, sir.

Q. In Macon?

A. Yes, sir.

Q. You did not appear before the Commissioner here?

A. No sir, I did not.

(Witness excused.)

MR. WILLIAM A. PAIR, being recalled by the Government, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. Pair, I believe you have previously been sworn?

A. Yes, sir, I have.

Q. Mr. Pair, on the occasion that you searched the house at 140 Morton Avenue in Athens, Georgia, did you find a commode in that house, a toilet?

A. Yes, sir, I believe so.

Q. Was there a toilet in there?

A. Yes, sir.

Q. Did you find any fire places or furnaces in the house?

A. There was a furnace in the basement, I believe, and there were heat registers in each room, in the floor of each room, I believe.

Q. There was a furnace there?

A. Yes, sir.

Q. And there was a commode there?

A. Yes, sir.

Q. In your experience as a law enforcement officer and particularly in investigating lotteries and gambling or wagering arrangements of that nature have you ever known of commodes being used as a means of disposing of lottery papers?

A. Yes, sir, I have.

Q. Have you—

Mr. Watkins:

Your Honor, I object to that as being far too remote to be relevant or illustrative of anything in this case. The matters that he is questioning him about are neces-

sary for human existence under our modern conditions whether you are in the lottery business or not. We think the government has just gone too far afield.

By the Court:

That is getting pretty far unless there is some connection in this case, Mr. Thompson.

Mr. Watkins:

The probability is that every house on Morton Avenue had some form of heat and some plumbing.

By the Court:

I would think so.

Mr. Thompson:

If the Court takes judicial cognizance of that we need not pursue it any further.

By the Court:

I sustain the objection.

Q. Mr. Pair, there's been some discussion during the taking of evidence here of the seizure of a certain strong box and its contents, one metal strong box containing miscellaneous notes receivable and insurance policies and two bundles of money as follows: one bundle containing ninety five $20 bills, and eleven $100 bills; one bundle containing fifty $20 bills. Do you know what disposition was made or has been made of that specific property?

A. Yes, sir, I do. We examined the strong box and its contents after it was seized and we had sufficient time to go over the papers that were in it in detail to determine if it was lottery evidence, and on finding that the box did not contain lottery evidence we made arrange-

ments to take the box and the contens back to Mattie Bell Anderson a 140 Morton Avenue, and we did return the box to Mrs. Mattie Bell Anderson on July 6, 1955. The money, the $4,000.00 in currency, that was in the box had previously been turned over to the District Director of the Internal Revenue who placed it in his vault for safe keeping. At the time I returned the strong box I did not take the currency with me. I returned the strong box and the rest of the contents with the exception of the currency, and I told Mrs. Anderson that I would return the currency if she so wished the next day, that there would be a collection officer present when I returned it to levy on it for back income taxes due. She said "If that is the case there's no use you returning it." The collection officer at that point issued her a receipt for $4,000.00 to apply on her, I believe, 1951 income tax deficiency.

Q. He gave her a receipt for $4,000.00 to apply on income tax deficiency?

A. That's correct.

Q. Due by whom?

A. Mrs. Mattie Bell Anderson.

Q. What happened to the remaining contents of the strong box?

A. The remaining contents with the exception of one or two papers was also seized by—levied on by the collection officers who were present at that time, and they also gave her a receipt for the papers which they took from the metal strong box. Mrs. Mattie Bell Anderson gave me a receipt for the strong box and its contents on July 6.

Q. Would you identify that paper please?

A. This is the receipt signed by Mrs. Mattie Bell Anderson on July 6, 1955 stating that I had returned the strong box which I had seized at 140 Morton Avenue

on June 21. Strong box contained deed to cemetery lot, miscellaneous receipts, miscellaneous paid bills.

Mr. Thompson:

I would like that paper identified as Govt. Ex. No. 1 please.

Q. Were all of the contents of the strong box returned to Mrs. Anderson with the exception of the money?

A. With the exception of $4,000.00 in currency. That is correct sir.

Q. Now why was that returned to her?

A. We did not consider the contents of the strong box to be evidence of a lottery being carried on there, had no connection with lottery that we could determine. Therefore, we returned it.

Q. Had she previously claimed the strong box and its contents as being her personal property?

A. Yes, sir. At the time we raided on June 21 she claimed the strong box and the money in it, the contents.

Q. When you returned it to her did she accept it?

A. Yes, sir, for a brief moment.

Mr. Thompson:

I tender this Govt. Ex. 1 in evidence.

By the Court:

Any objections?

Mr. Watkins:

I don't have any objections, Your Honor. I don't see how it's got anything to do with this hearing.

By the Court:

Some questions was raised as to what became of the money.

Mr. Watkins:

Well the question we raised is why did they seize it under a search warrant.

By the Court:

Well, I'll admit it.

Mr. Watkins:

No further questions.

(Witness excused.)

Mr. Thompson:

The search warrant is a part of the official record of the Court and I think the Court could take notice of it. However, we will introduce it in evidence if it is necessary that we do so.

By the Court:

It's in the file. I think I can certainly take judicial notice of it.

Mr. Thompson:

The Government rests.

MRS. MATTIE BELL ANDERSON, being recalled, testified as follows:

Direct Examination.

By Mr. Watkins:

Q. Mrs. Anderson, I don't know whether I asked you on direct examination or not as to whether or not you had had an operation?

A. Yes, you asked me. I said yes.

Q. Prior to June 21?

A. Yes.

Q. Do you know the name of the operation that you had?

A. It was a major operation, I guess, removed all of my female organs.

Q. Was it a hysterectomy? You ever heard them call it that?

A. No, I haven't.

Q. It was a major operation?

A. Yes, sir.

Q. Was that in Athens?

A. Yes, sir.

Q. When was it performed?

A. June 6.

Q. How long did you stay in the hospital?

A. Ten days. I was supposed to stay ten days, from nine to ten days.

Q. And you had been out of the hospital and at home how long?

A. A week.

Q. Had your doctor advised you whether you could do any kind of work?

A. He told me the week before they came there that —when I left the hospital that morning he told me, said "You go home and you just lay around and don't lift your hand to do nothing in four weeks."

Q. And that's what you were doing?

A. That's what I was doing. He said don't get excited, said "Don't let the children worry you or nothing, just lay around and don't even cook or anything."

Mr. Watkins:

Your Honor, we would like to offer in evidence all of the property that was seized, do it constructively for the greater convenience, I think.

By the Court:

Any objection to that, Mr. Thompson? You mean all of the property was brought in on this table?

Mr. Watkins:

Yes, sir. Everything that was seized including that that was seized from Clay's person and from the house at 140 Morton Avenue. I don't care anything about it physically being in evidence, but I think as a legal proposition it's got to be in evidence.

By the Court:

All right, and it's all described on the back of this search warrant is it?

Mr. Watkins:

Yes, sir, and Counsel for the Government and I have already agreed on it, that is that no point is made about the description in the claim of Clay as to the property taken from his person. I think it's over there in that box.

Mr. Thompson:

If the Court please, I do make this observation, rather than an objection; certain portions of that property, by decree of this Court, have been forfeited to the United States and are now the property of the United States. I think I can specify that as being $9.48 in United States currency, two Remington Rand printing calculators, and two pair of binoculars. Those items, by a decree of this Court previously entered, have been forfeited to the United States. I have no objection to the offering of them in evidence as the property of the United States.

By the Court:

Asserting the prior title of the United States?

Mr. Thompson:
Yes. sir.

Mr. Watkins:
Assuming that the forfeiture proccedings are proper and all that, it would only eliminate any question of returning it. It would not eliminate the question of the suppression as evidence.

By the Court:
How were they forfeited? Was there any claim to it or not?

Mr. Thompson:
No claim was filed.

Mr. Watkins:
Administrative forfeiture, I guess.

Mr. Thompson:
No sir, a legal forfeiture and no claim was filed.

Mr. Watkins:
In the Court?

Mr. Thompson:
Yes, sir.

Mr. Watkins:
Well it doesn't matter. As I say, that has no effect upon the question of the motion to suppress. It might well control the question of the return of the property to the claimants.

Mr. Thompson:
I agree with that.

By the Court:
Very well, we will admit it in evidence then subject to, or without prejudice to the alleged title of the Government.

Mr. Cowart:
Where is the property, Judge?

By the Court:
Is it in the property that was brought in here yesterday or the day before?

Mr. Thompson:
It is.

By the Court:
Anything further, Mr. Watkins?

Mr. Watkins:
I believe that is all, Your Honor.

Mr. Cowart:
Let it appear in the record that I do not have the papers in here.

The evidence closed.

Filed Jan. 8, 1857.

October 16, 1956.

By the Court:

Members of the jury, you have been impaneled to try the case of the United Stats against Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs. Clara Willis Cravey. The trial cannot begin until 9:30 tomorrow morning, so I am about to excuse you until that time, but before doing so let me make a little announcement to you, to apply throughout the trial of the case. After the evidence has begun in the morning you gentlemen should not discuss the case among yourselves at any time until you finallly go to your room to arrive at your verdict after the argument of counsel and the charge of the Court, and, of course, you shouldn't discuss it with any one else and you shouldn't let anyone else discuss it with you in any way, shape, form or to any extent. Presumably, no one will undertake to discuss it with you if they remember that you are on the jury, but they might not be able to look at you and tell you are on the jury, so if anyone should undertake to mention it in your presence just let them know that you are a juror and it shouldn't be discussed and I am sure that would end it. I will ask you also not to read any newspaper account of the trial of the case, that won't do any good. A news reporter might get it accurately and he might not, and presumably he would, but even so, if we knew it was letter perfect, don't read any newspaper account of the trial of the case at all and if you are listening to your radio or television and and it should happen to be mentioned just tune off that part of the program. I do all of that so you will be able to try the case solely on the basis of the evidence you will hear from the witness stand. Let me suggest this also, when you come to Court in the morning, if you get here

a little before 9:30, go back to your jury room so you won't be loitering around the hall and the Courtroom when we are not in session. Just go on to your jury room and the Marshal will bring you out at the proper time, and at intermission he will take you back to your jury room and, of course, when we knock off in the afternoon go on home until 9:30 the next morning. I don't know just how long it will take. We may be able to finish it tomorrow and we may not. So with those instructions you may now retire and come back tomorrow morning.

(9:30 AM, October 17, 1956, Witnesses called and Sequestered.)

Mr. Thompson:

May it please the Court, I would like to call attention to the fact that all of the defendants have entered pleas of not guilty. However, at this time one of the defendants is not on trial, Mrs. Clara Willis Cravey, we understand that she is ill, and we have not required her presence here at this time. She is too ill to be here. All of the other defendants are present.

BARNEY WATSON, called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. Watson, will you state your full name?

A. Barney L. Watson.

Q. What is your occupation?

A. Assistant Group Supervisor, Internal Revenue Service.

Q. You work with the Federal Government?

A. Yes, sir.

Q. How long have you been with the Internal Revenue Service?

A. Eight years.

Q. In connection with your official duties with the Internal Revenue Department have you had occasion to come in contact with Mr. Will parks Clay, a defendant in this case?

A. Yes, sir.

Q. And when was that, sir?

A. Well, best of my recollection it was on or about January 16, 1952.

Q. And what was the nature of that contact, Mr. Watson?

A. Well Collection Officer Hugh F. Anderson and myself were following a lead which was sent out of the Atlanta office to contact Mr. Clay in regards to the wagering tax law that become effective November 1, 1951, and the purpose of our visit was to secure a wagering tax stamp application, application for a wagering tax stamp from Mr. Clay if he was in the wagering or lottery business, and if he was not, we were to advise him that in the event he did go into the wagering or lottery business that he was liable for this Federal tax stamp.

Q. Mr. Watson, you state that was the purpose of your contacting him, I would like to know if in your contact with him you carried out that purpose.

A. We carried out those instructions, yes, sir.

Q. Just what did you tell Mr. Clay?

A. We asked Mr. Clay if he was in the wagering or lottery business. Mr. Clay said no he was not. We told him we were just making a routine check; in the event that he was, that he was liable for this stamp, and if he went into the wagering or lottery business any time in

the future he would be liable for this Federal tax stamp.

Q. Do you know of your own personal knowledge whether or not Mr. Clay ever secured such a stamp?

A. No, sir.

Q. You don't know whether he has or not?

A. I don't know of my own personal knowledge.

Q. Do you know whether or not of your own knowledge Mr. Clay has ever paid a gambling, wagering or excise tax?

A. To my knowledge, no, sir.

(No cross examination, witness excused.)

FLEMING DUBIGNON, called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Fleming Dubignon?

A. That's right, sir.

Q. What is your occupation, sir?

A. I am a Special Agent with the Intelligence Division, Internal Revenue Service sir.

Q. How long have you been in the Internal Revenue Service?

A. Been in the Internal Revenue Service since October of 1945, sir.

Q. And what is your present assignment?

A. Well, my present assignment, as I say is a Special Agent with the Intelligence Division and working on racket cases, lottery cases, and so forth, sir.

Q. Mr. Dubignon, have you been assigned in connection with your official duties to a wagering tax investigation

concerning Will Parks Clay and the defendants on trial in this case?

A. Yes, sir, I have, sir.

Q. Tell me about the assignment and what you have done in connection with it, sir?

A. Are you speaking of this—

Q. In connection with this particular case, Mr. Dubignon.

A. Er, in connection with this case, sir, I checked the records of the Director of Internal Revenue in Atlanta, Georgia, on June 20, 1955, to ascertain if Mr. Clay or any name by which I knew Mr. Clay, had purchased a wagering tax stamp or had made a return on a ten percent excise tax. The result of that investigation in our office was that I found no—

Mr. Gautier:

If Your Honor please, I think that if he is going into what a record shows or does not show the record would be the highest and best evidence.

By the Court:

What do you say, Mr. Thompson?

Mr. Gautier:

I don't think he has shown that he is the keeper of those records either. He just checked somebody's record up there.

Mr. Thompson:

If the Court please, while Mr. Gautier's objection might be good as to what a record shows, we submit that it is not good as to what a record does not show. I think I can give the Court a case or two on that in just a moment.

Mr. Gautier:

As I said as a part of my objection, that he has not shown either that he is the keeper of those records. He is not a competent witness to testify, if anyone could. That is part of our objection.

Mr. Thompson:

If the Court please, in McDonald vs United States, 200 Fed. 2d, 502 testimony such as this was admitted to show the absence of a record. I might qualify the witness further and ask him if he is familiar with those records.

Q. Mr. Dubignon, are you familiar with the records in the Internal Revenue Service Office?

A. Yes, sir.

Q. Where are those records kept?

A. Well, they are kept in the District Director's office, At that time, sir, it was 449 West Peachtree Street in Atlanta, Georgia. Of course, we have moved since then.

Q. Where are those records now maintained?

A. In the Peachtree-Baker Buliding, on the corner of Peachtree and Baker, on the third floor, in the office of the District Director of Internal Revenue.

Q. Are those records accessible to you as an intelligence agent?

A. Yes, sir, they are.

Q. Are you familiar with those records so that you can go to them and find the contents of them?

A. I am, sir.

Q. Is it part of your duty to check those records from time to time?

A. Yes, sir.

Q. How frequently do you have occasion to refer to and check those records, Mr. Dubignon?

A. Mr. Thompson, I would say at least seven or eight times a year, sir, about seven or eight times a year.

Q. How many times have you check them in connection with your investigation of this case?

A. I have checked them four times in the investigation of this case to my absoulte knowledge, sir.

Mr. Thompson:

If the Court please, the testimony of the witness is that the records do not disclose the stamp. We submit the testimony of a witness that the books or records fail to reflect certain entries or documents is admissible.

By the Court:

Let me see that case you refer to, please sir, in 200 Fed. 2d, 502.

Mr. Thompson:

To speed things along here I might say, we might avoid even that by at this time tendering in evidence two certificates of the Director of Internal Revenue to the effect that no such records are contained in his office. We submit these documents to be admissible under Rule 27 of the Rules of Criminal Procedure.

By the Court:

Well, why do you need this oral evidence then if you have the certificate from the custodian of the records?

Mr. Thompson:

If the Court please, I have tried cases against Mr. Gautier and Mr. Watkins before and I have found that they don't always agree with me on what the law is and I like to be as well prepared as I can.

Mr. Gautier:

We are going to object to these too, if Your Honor please, whatever they are supposed to be. We would want to be confronted with the witness who is going to testify, not some sort of a paper or affidavit or whatever it might be—he might draw up. This is a criminal trial.

Mr. Thompson:

If the Court please, I might show these to the Court.

By the Court:

Don't the rules cover this and provide that the certificate is proper evidence?

Mr. Thompson:

Yes, sir.

(Argument.)

By the Court:

Well, that's enough of that, I overrule the objection to the certificates and admit them in evidence.

Mr. Gautier:

We would like to have it understood in the record, if Your Honor please, that we are objecting to the introduction of those certificates because we are entitled, as a Constitutional right, to be confronted with the witness who has knowledge of what he testifies about.

By the Court:

Very well.

Mr. Gautier:

So he may be cross-examined like any other witness.

By the Court:

Let the record so show.

Mr. Thompson:

These have not been identified yet, I would like to have the certificate of District Director Paul Cobb, District Director of Internal Revenue, identified as Govt. Ex. No. 1. Govt. Ex. No. 2 is a similar certificate, one of them relates to the registration and payment of the stamp occupational tax, the other one relates to the payment of the excise taxes, and both of the certificates relate to Will Parks Clay, Will Parks Anderson, Mattie Bell Anderson, Obie Durham, Mrs. Mary C. Cotton, Alvin Q. Cotton, Clara Willis Cravey ,and L. B. Arnett. I might say, Judge, I have a number of other cases that I could cite to you.

By the Court:

And I overruled the objection to this witness' testimony.

Q. Mr. Dubignon, you stated that you checked the records on what dates?

A. I checked the records the first time on June 20, 1955.

Q. And what was the result of your search, sir?

A. In Bibb County, Georgia, sir, I found no wagering stamp in the name of Will Parks Clay, W. P. Parks, Mr. Anderson, or any other name, in the name of Mattie Bell Anderson, Obie Durham, the Cottons. In Clarke County, Georgia, there was no wagering stamp issued to anyone in Clarke County.

Q. Now, Athens, Georgia, is in Clarke County?

A. County seat of Clarke, yes sir.

Q. No wagering stamps issued to anyone in Clarke County?

A. No, not one in Clarke County, that's correct, sir, and there was no ten percent excise tax returns filed in any of those names or in Clarke County.

Q. Mr. Dubignon, have you checked the records since that time to determine the registration, payment of the wagering and occupation tax and the payment of the excise tax—

Mr. Gautier:

Your Honor, we would like to renew our objection to all this testimony. Same objection is made, if Your Honor please.

By the Court:

Very well.

Mr. Gautier:

Want it understood it is going to all of it.

By the Court:

Same ruling.

A. I have, sir, I checked again in December of 1955, May of 1956, and yesterday, October 16, 1956. The result was the same as the check in June 20, 1955.

Mr. Gautier:

That last date, if Your Honor please, that is after the date of this conspiracy, some check he may have made the 9th of June, 1956, I think would have nothing to do with the trial of this case. This indictment ended on June, the time of the period of this charge ended on June 30, 1955. We object to any evidence, any check of June of 1956 or after the date of this indictment, or alleged in this indictment.

By the Court:

What is the date the indictment was returned?

Clerk:

February 16, 1956.

Mr. Thompson:

If the Court please, I might answer that by stating that I am merely showing that to this date no returns have been filed for that period, and an attempt has been made to evade the payment of taxes. They haven't come in and paid it since the indictment.

By the Court:

I overrule the objection.

Q. Mr. Dubignon, have you in the course of your official duties had occasion to personally come in contact with Mr. Clay?

A. Yes, sir.

Q. And when was that, Mr. Dubignon?

A. Well, the first time, sir, was in 1950.

Q. Well, let's get on down during the period of time of this indictment or immediately proir to it, have you had occasion to come in contact with Mr. Clay in connection with your duties?

A. Yes, sir. I had occasion in the—well now that goes back to 1953 and '54, Mr. Thompson.

Q. Well, let's stick with '54, what was the nature of your contact in '54?

A. Well,—

Q. Oh, I'm going to withdraw that question, I—if you'll give me just a moment—(conferring with defendants' counsel) I will ask you specifically if you had occasion in January of 1954 to discuss wagering and occupational tax or excise tax with Mr. Clay?

A. I did, sir.

Q. Don't tell us the nature of your contact with him, but if you will, tell us the nature of your discussion concerning the tax liability?

A. Well, it was January 28, 1954, was the date, sir.

Q. And where was that, sir?

A. It was on the Columbus Highway, oh, some seven miles west of Macon, Georgia, out the Columbus Highway, Tobesofkee Creek to be exact.

Q. Tell the Court how to spell that?

A. I can't spell that myself, sir.

Q. Did you on that occasion discuss the taxes with Mr. Clay?

A. I did, sir.

Q. And what was the general tenor of your conversation with Mr. Clay?

A. Well, of course, the first beginning of the discussion was to—I asked Mr. Clay if he had a wagering stamp. which I felt that I knew the answer to before I asked him, but I asked him anyway, and I—

Q. Well, did he have one?

A. He did not.

Q. Did he acknowledge at that time that he didn't?

A. He acknowledged at that time that he did not, sir. I asked him about filing his excise tax return. He said he did not file one, was not due to file one.

Q. Claimed he was not due to file one?

A. That's correct, sir.

Cross-Examination.

By Mr. Gautier:

Q. Who keeps those records in Atlanta in the District Director's office?

A. Mrs, Fincher is directly over it, sir.

Q. She is the one that has custody of those records?

A. That's correct, sir.

Q. She works under the District Director?

A. She works under Mr. Cobb, the District Director.

Q. She is working for the Government still, isn't she?

A. She is, sir.

Q. In Atlanta?

A. Yes, sir.

Q. And available as a witness?

A. I presume so, yes, sir.

Q. As far as you know?

A. Yes, sir.

Q. You never kept those records yourself?

A. No, sir, I did not keep those records.

Q. And you only look at them in her office or her—where she keeps them there, from time to time, is that right?

A. That's correct, I examined the records in the office in Atlanta, sir.

Q. Did you ask Mrs. Fincher to look these records up?

A. I did not, sir.

Q. Did you just go in there and look them up yourself or not?

A. I went in and looked them up—now to just go in and look them up, I certainly told Mrs. Fincher what I was going to do before I looked them up.

Q. What I was getting at was whether she looked them up and got them out and told you what was there, or whether you did it yourself?

A. I did it myself, Mr. Gautier.

Re-Direct.

By Mr. Thompson:

Q. One moment, Mr. Dubignon. I wonder if you could contact Mrs. Fincher and have her be here at 9:30 in the morning, sir?

A. I could, sir.

Q. And if you could, tell her the names that we would like to inquire about?

A. Yes, sir.

(Witness excused.)

MR. HOMER MAYFIELD, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Homer Mayfield?

A. Yes, sir.

Q. You are from Atlanta, Georgia?

A. Yes, sir.

Q. And what is your occupation, sir?

A. Office manager in the Business Office?

Q. Of what, sir?

A. The Southern Bell Telephone Company.

Q. In Atlanta, Georgia?

A. Yes, sir.

Q. Mr. Mayfield, you were,—are you the custodian of the records of the telephone company in Atlanta, Georgia?

A. Yes, sir.

Q. You were asked by subpoena duces tecum to bring the original records of the Southern Bell Telephone and Telegraph Company showing the application for telephone service at 2247 Belvedere Avenue, S.W., Atlanta, Georgia. Did you produce that document?

A. Yes, sir.

Q. May I see it? (Handed it to Mr. Thompson). This is the document?

A. Yes, sir.

Mr. Thompson:

Will you identify that a Govt. Ex. No. 3, Mr. Clerk, the application for telephone service at 2247 Belvedere Avenue, Atlanta, Georgia.

Q. Will you tell us whether or not a telephone was installed at that address, Mr. Mayfield, according to the records of your company?

A. Yes, sir, we had one at that address.

Q. In whose name was the telephone?

A. It is in Mrs. C. C. Rawlins.

Q. Mrs. C. C. Rawlins?

A. Yes, sir.

Q. And when was that telephone installed?

A. Well, it was changed to her name back in 1947, prior to that time it had been in C. C. Rawlins name.

Q. Can you state whether or not that telephone was in service in that residence in that name during the period of March of 1955?

A. Yes, sir, it was.

Q. I will broaden that question a bit and ask you if it was in service in that home during the period from July 1, 1954 until June 30, 1955?

A. Yes, sir.

Q. And what was the telephone number that was assigned to that telephone, sir.

A. At that time it was assigned, it was—

Q. Well, during that period sir, is all we are concerned with.

A. Oh, it was Plaza-3-1787 during that period.

Q. And when was that change made, Mr. Mayfield?

A. From Mr. Rawlins to Mrs. Rawlins?

Q. No, sir, to that number.

A. I don't have that date. It is approximately two and a half years ago though because it was when all those numbers in West End went dial, I mean went to the seven digit numbers. I don't have the exact date.

Q. What was the number proir to the change?

A. Prior to the change it was Raymond-1787.

Q. But you don't know when the number was changed?

A. No, sir, I am sorry I don't remember the date.

Q. If after the change went into effect, Mr. Mayfield, if someone called that number, the Raymond number, what number would they be given?

A. Well, for awhile we intercepted calls and provided service from that number to the newly assigned number, and then after the new number was in the directory it would go to intercept and the people would be advised to consult the directory.

Q. Thank you. This is the official record?

A. That is, but I would like to substitute a photostatic copy for your record if I may, because that is a current record and is now valid.

Mr. Thompson:

I am going to offer the original of this document into evidence and I will display the original and copy to counsel here for any objections they might have.

Mr. Gautier:

If Your Honor please, we will not raise any point about substituting a photostatic copy, but we are going to object to any evidence about this record at all. I mean I am not going to raise any question about substituting the photostatic copy for the original so the man can have his record book, because it seems to be the same, but in the first place we see no relevancy. I don't know whether they can tie it up later, but we know of nothing so far to show that this has any material bearing upon any charges based in here, there is nobody named a defendant by the name of C. C. Rawlins or Mrs. C. C. Rawlins, or any evidence whatsoever to connect this up. We also raise the further objection about this being or supposed to be an application for telephone service. It is not signed by any applicant, no signature whatsoever is on there as the applicant. It is not an application. I don't know, it may be some sort of record, but is is certainly not an application. We object to it on that ground. It is not signed as any application although that is what it is headed up. It is not connected with any defendant in this case whatsoever.

Mr. Thompson:

I might state that I anticipate the Government evidence will connect that up to the main issue here. I have entered it in evidence merely to get the objections because I would like to excuse this witness. If those are the only objections that are to be made to it, I would withdraw my tender and tender it at an appropriate time later.

Mr. Gautier:

We don't mind him using this photostatic copy in the place of the original at the time he will want to offer it. We won't raise that point.

By the Court:

Mr. Witness, let's see, did I understand you to say this is the official record of your company?

Mr. Mayfield:

That is the official record of that telephone and the location of it.

By the Court:

And where is this record kept?

Mr. Mayfield:

It is kept in our business office in the regular files with all of our records of telephones.

By the Court:

In what town or city?

Mr. Mayfield:

Atlanta, Georgia.

By the Court:

Well, are you going to offer it later you say?

Mr. Thompson:

I will retender it later, if the Court please.

Cross Examination.

By Mr. Gautier:

Q. What did you say your name was?

A. H. E. Mayfield.

Q. Mr. Mayfield, it is your job with the telephone company simply to keep the records, is that right?

A. As office manager they are under my jurisdiction.

Q. You don't have anything to do with taking this so called application that you have here?

A. No, sir.

Q. You don't know anything about it personally, except this is a record of your company.

A. That's right.

Q. I notice on here that there are certain other items I would like to ask you about, because it might come up later. On here there is stricken through the residence there 963 Sells Avenue, S. W., is that right?

A. That is when we moved it from one address to the other.

Q. And that was at Raymond-1787?

A. Well, it was still Raymond-1787 over at the new address until the exchange went to seven digit numbers.

Q. You don't know when that was moved, from your record?

A. When it was moved?

Q. Yes, sir.

A. Let me see.

Q. Do you have that there?

A. It was moved on, er—let me see, 6/1/53.

Q. 6/1/53, is that the date that they—

A. That is the date that we worked the move order on it.

Q. You worked the move order, and on June 1, 1953—you don't know whether that was for the change from Sells Avenue to Belvedere or not?

A. Well, it was, had to be because that is the only time we have ever moved it.

Q. Now what does this notation on here—one of them is scratched through, 2/5/53, can you tell me anything about that, what that is?

A. Oh, er, the customer evidently wanted a better grade of service and that is a notation that we put on the control records. However, we keep another record when a customer asks us for a different grade of service.

Q. That is just a service record?

A. That is just a service record.

Q. And you have another one "8/26/54—No reply to verification"?

A. We sent her a letter and they made no reply to it. We canceled the request at that time.

Q. You know Mrs. Rawlins?

A. No, sir.

Q. You don't know anything about her?

A. No, sir.

Q. Has she still got telephone service with you?

A. That service is working now.

Q. That service is still working?

A. Yes, sir.

Q. But you don't know her or know who she is?

A. No, sir, I don't know her.

Q. Now you customarily take an application for service without having the applicant sign it?

A. Yes, sir, we take their application over the telephone, take the information down by telephone and we have a confirmation that we mail out to them.

Q. You don't have any confirmation on that?

A. No, sir, that was mailed to the customer.

Mr. Thompson:

Your Honor, we have had the Clerk identify the photostatic copy as Govt. Ex. No. 3 and we are returning the original to the witness.

By the Court:

Very well.

(Witness excused.)

MR. RICHARD H. WYNN, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Will you state your full name, please sir?

A. Richard Henry Wynn.

Q. Mr. Wynn, what is your occupation?

A. I am Athens group manager for Southern Bell Telephone Company, Athens, Georgia.

Q. And where are you presently stationed?

A. Athens, Georgia.

Q. Athens, Georgia. Mr. Wynn, as the Business Manager of the Athens, Georgia, telephone service there do you have under your official custody and in your control the records of the Southern Bell Telephone Company in Athens, Georgia?

A. Yes, all my business operations and records, yes, sir.

Q. Are those records kept under your control?

A. Yes, sir.

Q. You have access to them, sir?

A. Yes, sir.

Q. And where are they kept, at Athens?

A. At Athens, yes, sir.

Q. Mr. Wynn, you were requested to bring, by subpoena duces tecum served on you, the original record showing application for telephone service at 140 Morton Avenue, Athens, Georgia. Do you have that with you, sir?

A. Yes, sir.

Q. You were also requested to bring all records of invoices, records of long distance calls from that telephone, did you bring those records?

A. Yes, sir.

Q. Hand me the document, please sir. You have handed me a yellow card here, I will ask you to tell me just exactly what that is.

A. It is, sir, what we call a service application card, as a customer comes in we put the name—it is actually a contract for telephone service—his name, address and who the person, the person that actually comes in and signs up for it, and then later on the telephone number and the dates and all of the records of that particular telephone is kept on that.

Q. That card is your original record?

A. Yes, sir.

Q. Hand it to me, sir. I will ask the Clerk to identify this yellow card as Govt. Ex. No. 4. From this record can you tell Mr. Wynn, whether or not any service was ever extended under that application. Was a telephone installed?

A. Telephone was installed. The person came in to the office on August 10, 1954, and we installed the telephone on August 11, 1954.

Q. That was in August of 1954?

A. August the 11th, 1954.

Q. According to your official records where was that telephone installed?

A. At Morton Avenue, Athens, Georgia.

Q. And in what name was that installed?

A. It was installed in the name of Mrs. Clara Willis, a Mrs. B. H. Anderson came in and signed for a Mrs. Clara Willis. I mean it is Mrs. Willis by—

Q. You don't know whether she signed it or not, by your own knowledge do you?

A. Oh, no, sir, just the signature on here is what I am going by.

Q. What is the signature there?

A. The name is, it is in the name of Mrs. Clara Willis, by Mrs. B. H. Anderson.

Q. And your company, according to your records, did install service on that application?

A. Yes, sir.

Q. Do you have a telephone directory in Athens, Georgia?

A. Yes, sir.

Q. How are numbers listed in the telephone directory, under the name of the applicant or the name of the person that actually signed?

A. The name of the applicant, on the top, the listing, the name listing would be the way that the contract would be put in the telephone directory.

Q. Mrs. Clara Willis, 140 Morton Avenue—

A. Would be the way it would be listed.

Q. Now can you tell us what telephone number was assigned to that telephone?

A. Well, it was—the original telephone number was 3125-XW, and we changed telephone numbers on all telephones in Athens in the first part of September, 1954. At that time we assigned Liberty 3-5557.

Q. Thank you, sir.

A. And then on September 29, 1954, we changed that to Liberty 6-6398.

Q. That last change was when?

A. On September 29, 1954.

Q. Now, Mr. Wynn, you were requested to bring certain toll tickets with you. Do you have those?

A. Yes, sir.

Q. Will you hand them to me, please sir? I hand you what appears to be forty eight little tickets of some kind and ask you to tell me what these are?

A. It is a ticket that the operator—every time a long distance call is made the operator makes up this ticket for timing and billing purposes.

Q. What operator does that?

A. The long distance telephone operator. The operator in Athens, if it is an outgoing call, a call made from Athens to be billed in Athens, the Athens operator will make it up. If it is a call to be collected from some other location, the ticket would go to that location. The originating party will always make up the ticket. Where the call is originating from, that operator will make up the ticket.

Q. And what is done with those tickets after that?

A. After the call is completed it is stamped by a stamp machine, and then it is sent to Atlanta to our accounting people who rate it, and bill it and then the ticket is sent then to the business office back to me—to the Athens business office, to substantiate the bill; in case a customer has any question about the bill then we have the ticket to substantiate that particular bill.

Q. How long do you retain those records?

A. We retain these records six months.

Q. The toll records generally are retained six months?

A. The toll tickets we retain six months.

Q. In other words you destroy—each month you will destroy the set for the months, six months prior to that?

A. That's right.

Q. Now will you identify those documents that you have there in your hand as a group, just leave them in the order they are in and tell me what they are as a group?

A. Er, you mean the toll tickets or the calls made from—

Q. Those are toll tickets?

A. Toll tickets are what they are.

Q. And what are those toll tickets on, what name were they billed to?

A. Liberty-6-6398. I assume that all of them are.

Q. That is where, sir, Athens, Georgia?

A. Athens, Georgia.

Q. You can look at all of them and tell me if they all are.

(Looking through them.)

A. Liberty-6-6398.

Q. And what period of time do those tickets cover, Mr. Wynn?

A. The first, they are in numerical order, first one is October 20, 1954.

Q. October 20, 1954, and the last one, sir?

A. Is June 9, 1955.

Q. Some of those date back more than six months. How do you happen to still have them?

A. We were subpoenaed on this in the first part or, either May of the first part of 1955, I don't know. We were subpoenaed to hold the records.

Q. And you all held them because you were asked to?

A. Held them on account of a subpoena.

Mr. Thompson:

I would like to have these 48 toll tickets identified as Govt. Ex. No. 5.

Q. Mr. Wynn, these are retained under your custody in the usual course of business are they not?

A. Yes, sir.

Q. In Athens, Georgia?

A. Yes, sir.

Q. And they are official records of the Southern Bell Telephone Company?

A. Yes, sir.

Q. I turn here to a toll ticket that has a date stamped in the top left hand corner, denoting March 20, 1955.

A. That would be—

Q. I would like for you to explain that particular ticket, use that ticket to explain to us just exactly how your system works.

A. On March 20th at 9:00 A.M., er—a person at Liberty 6-6398 placed a call to Atlanta, Georgia, telephone number Raymond 1787, to a Mrs. C. C. Rawlins, and they talked ten minutes.

Q. That was a call from Athens to Atlanta to the numbers that you read?

A. Yes, sir.

Q. Well, now going throught the rest of these tickets, the information contained on each of them would be in the same order, you could tell that information from all of of them?

A. Yes, sir.

Q. Whatever—it would be different on each one?

A. It is from the town that places it to whatever town is called and the telephone number and the filing time, the actual time they place it, how long they talk and then the charge for it.

Q. I am attempting to keep those in that order so put the clip back on them.

A. Yes, sir.

Q. This one that you just read from that I identified, I am going to ask you if you will, just to initial that particular one. It has a gem clip on it.

A. Yes, sir.

Q. Now that is a part of what has been identified as Govt. Ex. No. 5, is it not, that particular toll slip?

A. Yes, sir.

Mr. Gautier:

If Your Honor please, we will make a general objection to all of the testimony as well as this, if he makes any tender of this—I don't believe he has yet—that it doesn't connect up any of this evidence with any charge that is now pending.

By the Court:

Well, he hasn't tendered those documents yet.

Mr. Gautier:

No, sir, we are making objections to all of this testimony too, same as we did with the one from Atlanta, so far it has not been connected up with this case. We want to preserve our rights under that.

By the Court:

I overrule the objection. You, of course, will have a right later on to move to exclude it if you think that it has not been connected up.

Mr. Gautier:

Yes, sir.

Cross Examination.

By Mr. Gautier:

Q. You, of course, did not handle any of these records, I mean the making of any of these records?

A. Personally, no, sir.

Q. They were either done, this original records, by somebody in your office in Athens—

A. Or under my supervision.

Q. This yellow record, number 4?

A. Yes, sir.

Q. And these toll calls you said were simply made by some long distance operator in the telephone company in Athens?

A. Yes, sir, normal ticket we make in the course of business.

Q. You know nothing personally other than what these records show?

A. No, sir.

By the Court:

Mr. Witness, did you say or not that all of these records are kept in the regular course of the business of your company?

A. Yes, sir, those are the normal records that we keep every day.

By the Court:

Unless there are other questions now he may be excused and we will suspend for ten minutes.

(Witness excused.)

(Recess 11:00-11:15.)

Mr. Thompson:

If the Court please, this witness was placed on the stand in your absence, Mrs. C. C. Rawlins. We are calling this witness a little out of order. Mrs. Rawlins announced this morning that she is feeling a little sick and I wanted to dispose of her testimony next.

By the Court:

All right, sir.

MRS. C. C. RAWLINS, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Mrs. C. C. Rawlins?

A. Yes.

Q. I know you are not feeling too well, but speak as loud as you can so the jury and counsel here can hear you. Mrs. Rawlins, you live at 2247 Belvedere Avenue, Southeast in Atlanta?

A. Southwest.

Q. Southwest?

A. Yes, sir.

Q. How long have you been living there?

A. Three years in June.

Q. Were you living there in March of 1955, Mrs. Rawlins?

A. Yes, sir.

Q. Do you have a telephone service to your home?

A. Yes I have a telephone.

Q. What is your telephone number now?

A. Plaza- 3-1787.

Q. And what was your number prior to that number?

A. Raymond-1787.

Q. Raymond-1787?

A. Yes, sir.

Q. And that is in Atlanta, Georgia?

A. Yes, sir.

Q. Mrs. Rawlins, I will ask you during March of 1955 if you had any telephone conversations with anyone relative to the purchase of some merchandise from you?

A. Yes, sir.

Q. Do you know who you were talking to?
A. No, sir, I don't.
Q. And where were those telephone calls from now?
A. I think one was from Athens and one from Macon.
Q. One from Athens, Georgia?
A. Yes, sir.
Q. And one from Macon, Georgia?
A. Yes, sir.
Q. And that was in March of 1955?
A. Yes, sir.
Q. Now what was the purpose of those telephone calls?

Mr. Gautier:

If Your Honor please, this lady hasn't identified who she was talking to and she is going into what amounts to a conversation over the telephone with some party we don't know who they are and they haven't been connected up with this case, don't know the date of it, time about March he says. I think that would be highly prejudicial to these defendants to go into some conversation. I don't know what it might be, but whatever it is it has nothing to do with this case.

By the Court:

I'll hear from Mr. Thompson:

Mr. Thompson:

I recognize that the objection is good. I stated that I was going to put this witness on out of order because of extraordinary circumstances I will try to approach it however a little bit more in order. Perhaps I can do that by producing those exhibits. If the Court will give me just one moment. I might state, if the Court please, that again I am hampered somewhat by the fact

that I will have to later identify the source of the exhibits but I will state in my place that I will definitely connect them up.

By the Court:

Connect them up to what?

Mr. Thompson:

To the defendants in this case.

Q. Mrs. Rawlins, I exhibit to you here a brown carton which has been opened and it bears a partially obliterated label on one side of it. I will ask you if you can identify this box, or crate?

A. They are some sales books that came from the Baltimore Sales Book Company.

Q. That is the content of it, they are sales books?

A. Yes, sir.

Q. But you—have you, do you know anything about this box, you said it came from Baltimore Sales Book Company?

A. Yes, sir, in Baltimore Maryland.

Q. Have you ever seen these before, or this one?

A. I have seen that type of book.

Q. I am talking about the box, more or less, with the label on it. Here is another one I am exhibiting to you. It has another label on it, see part of an address South West there, it has been partially obliterated. I may state to you, I will just display all of them to you Mrs. Rawlins. There is another one, do you recoginze these boxes that have been shown to you?

A. Yes, sir.

Q. And just tell us how you happen to recognize them. What you know about them.

A. Well, they are sales books from the Baltimore Sales Book Company.

Q. Will you repeat your answer?

A. I said they were sales books that were bought from the Baltimore Sales Book Company.

Q. And who bought them, Mrs. Rawlins?

A. I ordered them.

Q. You ordererd them?

A. Yes, sir.

Q. And when was that, Mrs. Rawlins?

A. I don't know the exact date, it was back sometime ago.

Q. Did it have any connection with the telephone conversations I was talking to you about?

A. Yes, sir.

Q. I ordered them for that party, whoever it was, that called.

Q. Just tell us after those telephone conversations what happened?

A. Sir?

Q. With relation to these boxes of sales books, tell us, beginning with the, proceed with the telephone conversations you testified to, just what transpired?

A. Well, the party that called wanted some sales books and asked me if I had any in stock or sold them and I told him no, but that the Baltimore Sales Book Company sold them and I could order them from them, and I er, ordered them from them.

Q. And they were delivered to you?

A. They were delivered out there.

Q. How many boxes were delivered to you?

A. It was fifteen cases I think, ten or fifteen cases, I don't recall exactly.

Q And what did you do with them, Mrs Rawlins?

A. Well, there was a party came out and picked them up.

Q. Where?

A. At my house.

Q. Now I note that on the boxes that there is a sticker here that appears to be partially obliterated, could you tell us how that happened. That it true on all of these boxes I believe. What caused that?

A. Well, I just took it off myself.

Q. You took it off yourself?

A. Yes, sir.

Q. And how did you do that?

A. Just with a sponge.

Q. Wet sponge?

A. Yes, sir.

Q. Now do you know to whom you delivered these boxes of what you call sales books?

A. No, sir, I don't.

Q. You know when the delivery was made?

A Along about that same time, in March.

Q. Of '55?

A. Sir?

Q. Of 1955?

A. Yes, sir.

Q. And you believe, I believe you stated it was somewhere between ten and fifteen all together?

A Yes, sir.

Q. Well, now were these—er, lottery books, these cases here—I withdraw that. I said lottery books, you have called them I believe sales books. Were these sales books the subject of the conversation that you had on those two occasions from Macon to Athens?

Mr. Gautier:

If Your Honor please, we still object to any conversation she had because she has not identified the party with whom she had a conversation, she hasn't identified

the party to whom she has delivered or sold these things to, if she did sell them, as being any one of the defendants on trial here now. Say that these boxes—

By the Court:

Just what are you objecting to?

Mr. Gautier:

We are objecting to any conversation that she had, we object to all of her evidence, to be frank, if Your Honor please, because it has not been connected up with any defendant, that he is going back into a telephone conversation with somebody who she is not able to identify, has not shown to be one of these defendants in this case.

By the Court:

What say Mr. Thompson, about going into the content of the telephone conversation?

Mr. Thompson:

If the Court please, I am not insisting on the content of the conversation. The question was were these boxes delivered, or was this transaction consummated as a result of that conversation ,or those two conversations over the telephone, or connected in any way with it. I am just trying actually to show a connection between the telephone conversation and the lottery books. I am not concerned with what the conversation was, or the verbatim recitation of it.

By the Court:

Well, ask your question then, let's see what it is.

Q. I will ask you, Mrs. Rawlins, whether or not these cases of sales books were handled by you in the manner

you have described as a result of the two telephone conversations you received?

Mr. Gautier:

Now, Your Honor, we say that is really in substance, covers the same thing as the conversation. It is an indirect way of going about getting in inadmissible evidence and we think it is all inadmissible because she has not testified who the conversation was with, as to whether it was any of these defendants, or the delivery was made to any of the defendants.

By the Court:

I think I will sustain that objection as to whether it was the result of a conversation or not.

Q. Mrs. Rawlins, did you acquire these books and handle them in the manner described subsequent to the telephone conversations?

A. Yes, sir.

Mr. Gautier:

If Your Honor please, we will not ask this witness any questions. We want to move to rule out all of her testimony in this case, it is irrelevant, immaterial and has not been connected with any defendant on trial.

By the Court:

I make the same ruling I made before. I overrule your motion. You will have the right to renew it in the event it is not connected up.

(Witness excused.)

MR. JAMES W. BRAY, JR., being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. State your full name Mr. Bray?

A. James W. Bray, Jr.

Q. And what is your occupation Mr. Bray?

A. I am the local Manager of the Southern Bell Telephone Company.

Q. Macon, Georgia?

A. Macon, Georgia.

Q. In that capacity Mr. Bray, do you have under your custody and control the records of the Southern Bell Telephone Company in Macon, Georgia.

A. I do.

Q. You were asked by a subpoena duces tecum to produce the original records showing an application for telephone service at 126 College Street, Macon, Georgia, on or about November 11, 1954. do you have that please sir?

A. Yes, sir, I have that.

Q. This document that you have handed me, the yellow card is what, will you just identify it. Tell me exactly what it is?

A. That is a service application card and the only record that we keep of a subscribers telephone service.

Q. And how does it come into your possession or control?

A. It is made up when the subscriber applies for service and then it is filed in our regular account files, numerically.

Mr. Thompson?

I will ask the Clerk to idenify this as Govt. Ex. No. 6.

Q. I hand this document back to you which has been identified as Govt. Ex. No. 6, and ask you if you can from that exhibit give me the history of that telephone?

A. The telephone was installed on November 11, 1954.

Q. I'll ask you to start with the application if you will, the application for service?

A. Er, it was taken, the application was taken on November 8, 1954, in the name of Alvin, of Quinton Alvin, 126 College Street, down staris which indicated the down stairs apartment.

Q. Is that Macon, Georgia?

A. Macon, Georgia. Er—later, on March 9, 1955, the telephone was moved to 3644 West Napier Avenue.

Q. Thirty six forty four Napier?

A. Yes, sir.

Q. All right sir.

A. On June 29, 1955, it was disconnected.

Q. June 29, 1955?

A. Yes, sir.

Q. Now Can you tell from that application whether it was an application made in person or one that was made telephonically?

A. I would assume that this was made—

Q. Well, if you can't tell us, I won't ask you to assume. That wouldn't be admissible. If you can, tell us from your bookkeeping records and the information contained on the card.

A. I couldn't say definitely, all I can say is what I think. Normally, this would be a telephone application.

Q. A telephone application?

A. Yes, sir.

Q. The person who made the application did not appear in person to make it?

A. That's correct, otherwise it would so signify here.

Q. Now what was the telephone number assigned to that sir?

A. 6-1580.

Q. That number remain the whole time that it was connected?

A. Yes, sir, same number.

Q. And the period of service there again, began when and was discontinued when sir?

A. Er, began November 11, 1954, discontinued June 29, 1955.

Q. And what was the name that the telephone was in?

A. Alvin Quinton Cotton.

Q. Alvin Quinton Cotton?

A. Right.

Q. Mr. Bray, the subpoena asked you to bring also all records of all long distance telephone calls from the telephone in question from November 11, 1954, to June 29, 1955. Do you have those records?

A. No, sir, I am sorry I don't have the record of those calls.

Q. Where are those records?

A. We maintain a toll ticket file, the only record that we have of any calls for a period of six months after which they are destroyed. They are buried at the City Dump.

Q. You destroy those records when they are six months old?

A. Yes, sir.

Q. Is that why you didn't produce them today?

A. That is why I don't have them, yes, sir.

Q. Are those toll slips kept in the ordinary course of your business, are they made in the ordinary course of business?

A. Yes, sir.

Q. And they are destroyed when six months old in the ordinary course of business?

A. Yes, sir, that is our practice.

Q. While they are physically available Mr. Bray, are they in your custody or under your control as Business Manager?

A. Yes, sir, they are.

Q. And this yellow card that has been identified as Govt. Ex. No 6, I am not certain whether I asked you, this is maintained in the regular course of business of the Southern Bell Telephone and Telegraph Company?

A. Yes, sir.

Q. As a part of the permanent records of that company?

A. Yes, sir, that is a permanent record.

Q. And it is under your custody and control?

A. Yes, sir.

Q. Do you know Mr. Pair, Mr. Bray?

A. I don't.

Q. Or Mr. Morris?

A. I believe Mr. Morris is a Federal Agent. I believe I met him on one occasion and later today I believe.

Q. How did you happen to meet Mr. Morris?

A. I believe he was one of the agents who came to my office sometime ago and wanted to see a record of long distance calls made on this telephone.

Q. Did you have the record available at that time?

A. Yes, sir, I had the record available at that time and produced them for him.

Q. Did you make it available for Mr. Morris?

A. Yes, sir.

Q. I will ask you whether or not Mr. Morris asked you to save those toll tickets?

A. Yes, sir, he did ask me to save those, and unfortunately those tickets were refiled and were subsequently destroyed in the regular manner.

Cross Examination.

By Mr. Gautier:

Q. I believe you first said that this was put in Alvin Quinton?

A. Yes, sir, that name Cotton there, I didn't see it—

By the Court:

Speak out louder.

A. The name Cotton was below there. I didn't see that.

Q. So it was in Cotton's name?

A. It was in Cotton's name.

Q. Originally?

A. Yes, sir.

Q. That is what I wanted to get clear.

A. Yes, sir.

Q. Now, I believe you didn't have anything to do with the taking of this application?

A. No, sir.

Q. You said something about some toll tickets being destroyed every six months, who destroyed those, these particular toll slips that you were speaking about on this telephone?

A. Those slips are destroyed by our Office Manager.

Q. Who is that?

A. Mr. W. A. Flynt. He, er desig—

Q. You didn't destroy them yourself?

A. No, sir.

Q. You just know that is a practice in your company?

A. Yes, sir, that is correct.

Re-Direct.

By Mr. Thompson:

Q. Since you received the subpoena Mr. Bray, have you attempted to find those toll slips?

A. Yes, sir.

Q. On how many occasions, sir?

A. I don't remember exactly how many times in response to, er—a call from your office, and from Atlanta, I attempted to find them in Atlanta, and I attempted to find them in Athens.

Q. Do you know anybody that would know where they are?

A. No, sir, I don't. I believe they are destroyed.

(Witness excused.)

MISS INEZ KINNEY, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Miss Inez Kinney with the Department of Revenue, State of Georgia?

A. Yes I am.

Q. What particular unit are you assigned to, Miss Kinney?

A. I am in the Motor Vehicle License Unit.

Q. What records are under your control as—

A. I file all of the original records and original transfers.

Q. Of what?

A. Of tags.

Q. Automobile license tags?

A. Automobile licenses, yes sir.

Q. How long have you been employed by the State of Georgia Miss Kinney?

A. Seventeen years.

Q. You are more or less, the witness that is sent when records from that department are subpoenaed aren't you?

A. Yes, I am.

Q. In your employment are the original registrations of automobile vehicles in Georgia under your custody and control?

A. Yes they are.

Q. You were asked to produce here today, Miss Kinney, a number of automobile registrations, the first of which was for a 1955 Oldsmobile 98. Do you have that registration please ma'am?

(Witness handed it to him.)

And what is the name in which that registration is made?

A. In the name of Mrs. Mary C. Cotton, 126 College Street, Macon, Georgia.

Q. One twenty six College Street, Macon Georgia?

Mr. Thompson:

Will you identify that as Govt. Ex. No. 7 please Mr. Clerk.

Q. You are going to want these back aren't you?

A. Yes.

Mr. Thompson:

I might ask counsel now if we can substitute photostats. We might save a little time if asked the witness

to give me the documents she brought so I can display these photostats with them to counsel and then we will identify them.

By the Court:
All right sir.

Mr. Gautier:
These photostats will be all right, if Your Honor please, as far as being photostatic copies go. We may have other objections.

By the Court:
Very well.

Mr. Thompson:
I would like for the Clerk to identify the photostat of Govt. Ex. No. 7.

Q. While he is doing that I will hand you—you have produced already four documents in response to the subpoena duces tecum?
A. Yes, sir.
Q. I will ask you what that document is?
A. This is a certified photostatic copy of the original on L. B. Arnett, 126 College Street, for a 1954 Chevrolet, 2 door, 60571 EX issued the 14th day of February, 1955, license number.

Mr. Thompson:
Will you identify this as Govt. Ex. No. 8 please Mr. Clerk?

Q. I hand you here a third document that you have produced and ask you if you will to identify that please mam?

A. That is a certified photostatic copy of an original application that I have in my file in the name of B. J. Stewart, Rt. 2, Knights Road, Macon, Georgia, it is on a 1941 Buick, 2 door, license 10196 J, issued on the 18th of April, 1955.

Q. Those are 1955 licenses all through?

A. Yes they are.

Mr. Thompson:

I will ask the Clerk to identify this as Govt. Ex. No. 9.

Q. And I hand you a fourth document that you have produced and ask you Miss Kinney, if you will identify that document?

A. It is a certified photostatic copy of an original application that I have in my file on a 1939 Buick Sedan, issued to John Owens, Sr., 54 F. Tindall Heights, Macon, license 11833 F, issued 19th of January, 1954.

Mr. Thompson:

I will ask the Clerk to identify this as Govt. Ex. No. 10. I am going to return these originals to the witness and you can return them to the State of Georgia records. I will have you state again that those are the records of the State of Georgia?

A. Yes they are.

Q. They are public documents mam?

A. Yes.

Q. And you are custodian of them?

A. Yes sir.

(No cross examination, witness excused.)

Mr. Thompson:

If the Court please, I would like to be permitted to explain to the jury as to the question of evidence, frequently we have the problem of having a lot of documentary evidence produced by people that know nothing about the transaction generally and we have to get it in the record before the people that do know about it, can testify about it, to explain my method of presenting the evidence.'

By the Court:

Yes, sir.

MR. CHARLES H. YATES, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Mr. Charles H. Yates?

A. Yes, sir.

Q. Where do you reside?

A. Now?

Q. Yes.

A. My business is at 178 New Street.

Q. You reside in Macon?

A. Macon, Georgia, Yes sir, at 2619. Stanislaus.

Q. Mr. Yates will you state whether or not in the early part of 1955 you were in the automobile business in Macon, Georgia?

A. Yes, sir.

Q. What was the name of your concern sir?

A. Charles H. Yates Motor Company.

Q. What kind of automobile did you deal in?

A. Oldsmobiles.

Q. Is that company still a going concern sir?

A. No, I was, I sold out last November.

Q. And what happened to the records of that company sir?

A. Well I have practically all of the records.

Q. You took your records with you sir?

A. Yes, sir.

Q. You were asked to bring by a subpoena duces tecum, all of the records of Charles H. Yates Motor Company concerning the sale of a 1955 Oldsmobile, which is more particularly described, to Mary C. Cotton on February 17, 1955. Do you have such a record sir?

A. I have the invoice, the duplicate invoice. Of course, we give the original to the purchaser.

Q. Might I see that sir?

(Handed it to him.)

Q. I will ask you Mr. Yates, just to state for identification purposes just exactly what that is.

A. This?

Q. Yes, sir.

A. This is an invoice for the Ninety-eight Oldsmobile.

Q. I believe you said duplicate invoice?

A. Well, you see there is a copy, white copy, and this yellow. We give the white one to the purchaser and this is the exact duplicate of the original.

Q. That is retained in your files?

A. Yes.

Q. Is that retained in the ordinary course of business in your files?

A. Yes, sir.

Q. And I believe this is invoice number—

A. Ten Eighty-Seven.

Q. Sold to Mrs. Mary C. Cotton?

A. Yes, sir.

Mr. Thompson:

Will you identify this as the next Government Exhibit please Mr. Clerk, No. 11.

Q. Did you handle this transaction personally Mr. Yates?

A. No, sir.

Cross Examination.

By Mr. Gautier:

Q. Mr. Yates, did you have any conversation or contact with Mrs. Mary Cotton over here about the automobile?

A. No, sir.

Q. Or anybody?

A. Nobody outside of the salesman.

Q. I mean did you have anything to do with the sale of the car?

A. No I had nothing to do with the sale whatever. Mr. Long handled that.

Q. You just got a record of what happened?

A. Got a record, yes.

Q. And Mr. Long was the salesman? He handled the entire thing?

A. Yes, sir.

(Witness excused).

MR. LEHMAM J. HOWINGTON, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. What is your full name Mr. Howington?

A. Lehman J. Howington.

Q. What is your occupation?

A. I am a credit supervisor with General Motors Acceptance Corporation.

Q. How long have you been with General Motors?

A. Sixteenth of December will be six years.

Q. Are you stationed here in Macon, Georgia, sir?

A. Yes, sir.

Q. Mr. Howington, a subpoena was served on you requiring the production of certain records. Do you have those records sir?

A. Yes, sir.

(Handed them to him).

Q. I am going to hand you back one of the documents that you have handed me and ask you if you can tell me what that is?

A. This is a General Motors Acceptance Corporation form. It is called a 582, and it is sent between our General Motors branches in the United States for the business that is being transacted with one of our customers. In other words if our customer moves to California then we send—

By the Court:

Louder please sir.

A. This is an assignment, briefly, this is an assignment to another GMAC branch to handle an account for the local branch. It is called a 582 form, and it gives the customer's name, balance on the car—

Q. Let me see that document, please sir. I don't think that is the one I wanted.

(Looking through the file.) I hand you another document and ask you if you can identify that, please sir.

A. This is another GMAC form. It is what we call a BR card, a branch record, gives the name of the customer, described the collateral, the monthly installments, the unpaid balance, the account number, the date of the contract, the date it is due.

Q. And who in this case was it? What was the name of the customer?

A. Mrs. Mary C. Cotton.

Mr. Thompson:

Identify this as the next Government Exhibit, please Mr. Clerk, No. 12.

Q. I will ask you Mr. Howington, is this a part of the permanent records of GMAC?

A. Yes, sir.

Q. Is it a record that is kept in the normal course of business?

A. Yes, sir.

Q. Are you the custodian of it sir?

A. No, sir.

Q. You are not the custodian?

A. No, sir.

Q. Who is?

A. Well, our Accounting Manager would probably be designated custodian.

Q. What is his name sir?

A. At the present time he is Mr. Stark Buckner.

Q. And where is he sir?

A. This week he is in Columbus, Georgia, GMAC.

Q. Then you are not the official custodian of any of these files here?

A. Well, I am responsible for any files in the office.

Q. You are responsible for them in what sense Mr.—

A. In other words, they are available to me at all

times, and if one were to be misplaced or misfiled, or—someone probably would come to me and ask me if I could find it, or where it is.

Q. Can you tell me from this record then, sir, just exactly what this transaction purports to be—I have the wrong one here again. What does that transaction purport to be, just the general nature of it?

A. This record here indicates to us that on February 17, 1955, that Mrs. Mary C. Cotton bought a 1955 new Oldsmobile, 4 door sedan, motor number and serial number described on the card, first payment came due on March 20, 1955. She had—

By the Court:

Speak out a little louder please sir.

A. She had 30 installments of $79.93, beginning March 20, 1955.

Q. Seventy-nine Dollars and Ninety-three cents a month?

A. Yes, sir.

(No cross examination, witnes excused.)

MR. JOHN VERNON WALLACE, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. Wallace, will you state your full name?

A. John Vernon Wallace.

Q. Mr. Wallace, what is your occupation?

A. Director of Industrial Relations, Bibb Manufacturing Company.

Q. How long have you been with Bibb, sir?

A. Since er, July of '43—no, July of '43 is right, yes sir.

Q. Mr. Wallace, you were subpoenaed to bring here records of Bibb Manufacturing Company, Macon, Georgia, showing salary payments made to Alvin Q. Cotton for the period January 1st, I believe, through June 30, 1955.

A. That's right.

Q. Do you have those records, sir?

A. I do.

Q. Just tell us what you have there, sir?

A. These are the individual checks by weeks during that period, and the second sheet—

Q. Let me see those checks, if I might. This is a group here of 25 checks. I would like for you to identify them for us, just tell us exactly what they are now, as a group.

A. These are checks paid by week ending shown on it for the net amount of earnings.

Q. From what period?

A. Net amount of earnings after all deductions, have been made for Social Security, for income taxes and for other purposes.

Q. For what period, sir?

A. For a period beginning January 1, 1955, through June 30, 1955.

Q. Do you have the total number of those checks?

A. Twenty-five of them.

Q. Do you have the total amount of those checks I should say?

A. Total amount of these checks on this slip here is Eight Hundred and—

Mr. Gautier:

If Your Honor please, I fail to see the relevancy of what somebody possibly may have made at the Bibb

Manufacturing Company in the trial of this case and we object to it.

By the Court:
What say Mr. Thompson?

Mr. Thompson:
If the Court please, we purport to show that Mrs. Cotton bought this automobile that is being talked about, a 1955 Oldsmobile, for the use of Mr. Clay. We are attempting by this evidence to show as circumstantial evidence that the funds available to her had come from some other source than the salary of Mr. Cotton, which would tend to show first of all that she was associated in the lottery business and second of all that somebody else was paying for the Oldsmobile.

Mr. Gautier:
If Your Honor please, I think he is going into sort of an argument here before the jury as to what he sort of thinks, in a round about sort of way he might get at, if he is going to make that kind of statement I think we should exclude the jury. I hate to take up that time though. But we doubt that what Mr. Cotton might make would be relevant in the trial of this case.

By the Court:
I overrule the objection.

Q. What is the total balance on those checks?
A. Eight Hundred and Seven Dollars and Thirty Cents net.
Q. And that covers six months?
A. Covers six months.
Q. Now these are, I believe you said, checks of the Bibb Manufacturing Company paid to A. Q. Cotton?

A. That's right.

Q. And what do these payments represent, sir?

A. Those payments represent renumeration for work done with us, or for services.

Q. In other words, they are salary payments.

A. Salary, yes.

Q. They are permanent records of the Bibb Manufacturing Company?

A. Yes, sir.

Q. Are they kept in the ordinary course of business, Mr. Wallace?

A. They are, yes.

Q. And are you their official custodian, are they under your control?

A. I have access to them.

Q. You do know that they are the official records of the company?

A. I do know that they are the official records of the company.

Q. Where were these withdrawn from?

A. From our payroll department.

Q. Were they withdrawn under your supervision, sir?

A. Yes, sir, I saw them withdrawn. They were given to me by the Treasurer of the company.

Q. You saw them withdrawn from the files?

A. That's right.

Q And what were the other documents that you had there, sir?

A. This shows the total amount of earnings and that is your net amount of any earnings on those checks.

Q. Yes, sir.

A. This total is the amount that was submitted on this form for quarterly reports to the government.

Q. Well, what would be the difference between the net amount and the total amount, would be the amount that was withheld?

A. It is the amount of deductions that were made for income tax purposes, for Social Security deductions, for deductions paying for insuranc , hospitalization and deductible amounts like that.

Q. Those amounts would not be available to—

A. They would not be on there because that is the net paid to the individual after any deductions were made.

Q. All right, sir.

Cross Examination.

By Mr. Gautier:

Q. Mr. Wallace, you don't know Mr. Cotton do you or do you?

A. Yes, I think I do.

Q. You think you do?

A. Yes.

Q. Do you know anything about—you know Mrs. Cotton?

A. Yes, I have met Mrs. Cotton.

Q. You have met both of them?

A. In our office.

Q. You know whether she was employed at any time during that period?

A. I would have to check our records to be exact.

Q. She has worked for Bibb?

A. She has worked for us before.

Q. And you don't know what kind of work she might have been doing at that time, of your knowledge?

A. Of my own knowledge, no.

Q. Or whether Mr. Cotton had any other work besides working

A. I wouldn't know that either.

Mr. Thompson:

While he is still up here, I didn't identify a group of 25 checks, as Govt. Ex. No. 13.

(By Mr. Gautier):

Q. Let me ask you this Mr. Wallace, do you know anything about the Cottons recovering a considerable sum of money in a damage suit?

A. Beg pardon?

Q. Do you know anything about the Cottons recovering a considerable sum of money growing out of a damage suit?

A. I don't recall that I do.

Q. As the result of the death of one of their children in an automobile accident?

A. I don't recall, but under our insurance program children would be covered.

Q. You have any record of that with you?

A. I do not have, no.

Q. You mean you have coverage under the insurance policy for all members of the family.

A. For those who participate in our insurance, it covers all members of a family up to a certain age, all children.

Q. You don't know anything about any damage suit in Court involving the Cottons?

A. No I am not aware of it.

(Witness Excused.)

MR. WILLIAM A. PAIR, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Will you state your full name and address, please.

A. William A. Pair, Atlanta, Georgia.

Q. Mr. Pair, what is your present occupation?

A. I am a Special Agent with the Intelligence Division of the Internal Revenue Service.

Q. How long have you been employed in that capacity?

A. In that capacity, since April of '53. I have been with the Internal Revenue Service since June of 1946.

Q. What is your current assignment?

A. Current assignment is the investigation of fraud in relation to any form of federal taxes.

Q. I notice you have your hair cut real short there, is that the way you usually wear it?

A. No, sir, not ordinarily.

Q. Why do you have it that way at this time?

A. Well, it is in connection with an assignment at this time.

Q. You are presently on an assignment that requires short hair?

A. Looks better that way!

Q. Mr. Pair, in connection with this work that you do, what different localities have you worked?

A. In all parts of Georgia, in Florida, in Pennsylvania, Missouri, Illinois.

Q. You are presenty on an out of state assignment, are you not?

A. Yes, sir, I am.

Q. Mr. Pair, how many different types of tax violations have you investigated in your official duties?

A. Income tax violations, wagering tax violations, manufacturers excise tax violations, Social Security withholding tax violations.

Q. Would you give us an estimate of the number of individual investigations that you have made say in the past, well since you have been assigned to the Intelligence Unit?

A. On, all types?

Q. Yes, sir.

A. I would say in the neighborhood of some sixty investigations, that is major, there are other minor investigations that require only a day or two's work. I won't count them as a full scale investigation however.

Q. You have made some fifty fraud investigations?

A. Sixty fraud investigations during that time, yes, sir.

Q. Any of those investigations relate to—er, lottery or what is known as the bug or numbers racket, Mr. Pair?

A. Yes, sir, I have made several investigations on bug activities, I would say some twelve to fourteen major investigations along those lines.

Q. Mr. Pair, just exactly what is the bug or numbers racket, could you tell us?

A. Yes, sir, the bug is a form of lottery, in which the player or better, bets money on any three digit numbers that he might choose. When he bets the money he is betting on that number to be the winning number for that particular day. The winning number in the bug operation, as it operates in Georgia, is secured from the total bond and stock sales of the New York Stock Exchange. The total sales from the New York Stock Exchange is published in the paper every day, so it is a particularly easy matter for every better to check the winning number to see if he has won for that day. The player of the bug bets—

Q. Well, before you get to that, let's go into that determination of the number. Now you said, I believe that the bet is usually placed on a three digit number?

A. Yes, sir.

Q. Will the total sales usually exceed three digits?

A. Yes, sir, they go into the millions.

Q. Now you determine the number and what you call that, a hit?

A. A hit.

Q. How do you determine the hit from the bond sales record?

A. The hit or winning number from any given day is determined, the first digit in the winning number is the hundred thousand digit in the bond sales—

Q. I am going to ask you, if you will, to facilitate our understanding of it, make a hypothetical bond sale number.

You have written on the pad, 2,410,580.

A. That is the total, would be the total bond sales for a given day. Now, the first digit and the winning number will be 4, which will be the hundred thousand digit in that total sales. The second number will be 1, which is the ten thousand digit in that total sales. Now, the stock number will be a similiar number.

Q. Now, you have written on that pad another number, 3,561,000. Now, what would that be, in dollars or shares?

A. That would be in dollars. The last digit in the winning number will be the 6 or the ten thousand digit in the stock sales. The winning number for that particular day would be 416.

Q. Have you found from your experience in the field of investigation that you pursued that that is universal or rather that is a statewide method of determining the hit?

A. That is statewide, yes, sir. That is the bug. There are other forms of lotteries operating that have a different system of securing a winning number, but that is the way the bug operates.

Q. Now, in the example that you have given here, the hit for this particular day would be 416?

A. Yes, sir.

Q. Go ahead with your explanation.

A. The person who wishes to play the bug contacts or is contacted by what is called a writer. He is a person who accepts bets from any players. He is furnished a book in which to record these bets. The book is a numbered book, each bet is recorded in triplicate in the book. Each ticket in the book is a numbered ticket, in other words the first three sheets of paper will bear the same number. The book might be 481-1, the 1 being the page number, and the three pages will bear the same number, 1, the bet is recorded, there will be a date, a writers symbol number—

Q. Now, what is a writers symbol number?

A. Well, in order to avoid detection, no names are generally used in this. A writer will be given a number such as "X" or "Y" or some number like "10" or "11". That will be his code number. He will record that code number on any ticket that he may write.

Q. Where is that code number placed on the ticket?

A. The er—could I have a book, Mr. Thompson?

(Getting him one.)

Q. Will you tell me what that is I just handed you?

A. This is what is commonly called a lottery writer's book. They are issued to the persons who accept the bets. That is the writer's by the banker or the boss in the organization, and he records the bets that he accepts

on this. At the top of the book there is a place for the date in a little box affair and there is where generally is recorded the writer's symbol number. It is in the top right hand corner of the ticket. Now, that may vary from time to time. In lot of instances this book may not even be used. They write on scraps of paper or anything that they might be able to get their hands on in the absence of a book, but somewhere on the ticket will be the symbol for a writer. There will also be the date of the ticket, the number or numbers which they wished to bet, followed by a dash and then the amount of money that they are playing on each one of those numbers.

Q. How much can be bet on a number?

A. Any amount that the banker for that particular organization is willing to take.

Q. A penny, a dollar or a larger amount?

A. A penny per number is ordinarily the minimum that would be taken. That, in this particuler area, will give a payoff of five dollars, the odds being five hundred to one. That payoff varies in certain sections.

Q. So now, just what is the book used for?

A. The book is used to record the bet. It is written, as I said, in triplicate with one copy of the bet going to the player, and another copy, the original of the thing going to the banker, eventually winding up at the banker, goes through a series of hands before it gets to him, and the tissue copy staying in the book retained by the writer. After the—

Q. Before you get to that, what is the purpose of the three copies, one for the writer you states?

A. That is the tissue copy which is retained in the book for the writer. The original, as I said, goes through several hands but eventually winds up in the hands of the banker or boss of the organization for his bookkeeping

to take place, and another copy is handed the player by the writer so that he will have a record of the bet.

Q. All three of those copies just alike?

A. No, sir, they vary, on the—er, color. The information on them will be identical. They will be written with carbon paper.

Q. So what is the next step in the usual lottery operation?

A. After the ticket, original retained by the writer, he in turn turns the ticket that he has written for that particular day over to what is called a pick-up man.

Q. A pick-up man?

A. A pick-up man. The pick-up man may service ten to fifteen writers. That is he may pick up from ten to fifteen writers, the pickup man gathers the tickets from the writers and in turn turns them over to what we call a sack or drag man. The drag man in turn will turn them over to the boss of the organization which we call a banker.

Q. Now, in taking these bets, are there any variations on how you can bet, you just always bet on a three digit number?

A. The bet must be on a three digit number.

Q. What is this boxing lottery?

A. If you wish to play a number several ways, for instance you might want to play 417, you might also want to play 471, or 174, so if you wish to play any combination of any three digit number, you merely put a box around the number and in any way if that—any combination of that number hit for that day, you will be paid off on a reduced basis, of course.

Q. Well, now we had a number there, this winning number was 416.

A. Yes, sir.

Q. Will you show us just how you would put 416 in a box and tell us what that would mean if we found it that way?

A. The number will be written on the ticket, 416, it would have a rectangle or square drawn around it followed by a dash and the amount of money that would be bet on that particular number. Now, if any combination of that 416 is the winning number for that day then the person playing that number will have a winning number.

Q. He would get paid five hundred to one odds, but in that particular case on a six cent bet he would only be paid five dollars. It, in other words it would be a penny for each one of the combinations, a total of six cents.

Q. If he bet six dollars on that what would—

A. He would be paid five hundred dollars.

Q. Now, do these numbers, are they published every day in the week?

A. Er, the Stock Market, the New York Stock Exchange only operates five days a week, Monday through Friday, less any holidays that they might be closed for. The bug therefore only operates on the days that the New York Stock Exchange operates.

Q. When does the information become available as to what the winning number is, is it known before the paper is published?

A. Yes, sir, the New York Stock Exchange closes at 4:00 o'clock and within ten to fifteen minutes after that time the number can be made available.

Q. Is there any time element in the plan of this lottery?

A. Actually the playing of it for any given day, there is. Ordinarily the writer, for instance on accepting bets for today's lottery, would be able to write up through

around 11:00 o'clock, and then from 11:00 o'clock to around 1:00 o'clock or 12:30, somewhere in there depending on each lottery operation, the pick-up men would be going around and gathering the tickets from the various writers. So anything written after that date, that hour, would be on tomorrow's lottery business.

Q. What insurance does a banker have that some fictitious ticket won't be run in on him after the number is known?

A. The lottery pick-up man generally makes his round between 11:00, 12:00 11:30, depending on the company he works for. He in turn turns these sacks that he has gathered over to the sack man in the neighborhood of 12:00 or 12:30. In the ordinary lottery operation the banker then will insist that the sack man have those tickets in his hands by around 2:00 o'clock at the latest, and of course the New York Stock Exchange doesn't close until 4:00, so that gives him a couple of hours leeway there so he is taking no chances of anyone slipping in a winning number on him after the information has been made available to the public.

Q. And he has the original ticket in his possession?

A. The original tickets. The pick-up man, by the way Mr. Thompson, I don't know whether I told you or not, generally operates on a percentage basis of whatever the total bets that he picks up from these writers. It varies anywhere from around six to ten percent of the total take for that particular day and that will be his cut.

Q. That is the pick-up man gets how much?

A. Anywhere for six to ten percent, a writer will get twenty-five percent of the total business he writes, the sack man is generally on a salary basis, some lottery companies, the sack man is not in the picture, the banker will pick up directly from the pickup men himself. Generally there is a sack man on a salary basis.

Q. You say in some businesses Mr. Pair, does this lottery operation have to be in the form of a business, that is couldn't you just operate it one day and that would be the end of it?

A. No, sir, it is an organization. In order to have a profitable lottery going you have to have dozens of writers out and five to six pick-up men picking up from those writers. It would not be a feasible thing to have a lottery operating for one day because it would take you weeks to get your company organized.

Q. In other words you couldn't make enough contacts in just one day to operate one day?

A. No, sir, you certainly couldn't.

Q. Wherein, if any, is the profit for the banker in this transaction?

A. Well as I said, the writer gets twenty-five percent of what he writes, the pick-up man gets anywhere from six to ten percent of what he picks up. The chances are on a thousand to one, I believe there is that many, nine hundred and ninety-nine different winning numbers, could be that many, banker only gives you five hundred to one odds so the odds themselves take care of him making money on it.

Q. What does the banker do with all of this, these tickets after he gets them?

A. The tickets come into the banker's possession generally in some out of the way place, some place where he feels that he is secure. He sets himself up an office, and the tickets come into his possission there. He takes, along with any office that he might have, depending on the size of his company, takes adding machines and for each pick-up man's business he runs a tape on that particular business, showing the amount of each ticket and totalling that. That is called a ribbon and one of those ribbons is made for each pick-up man's business. On this

ribbon will be shown the total amounts bet for that day, then there will be a reduction for what the writer would get, the twenty-five percent. Then the date would generally appear on the ribbon, the winning number for that day would appear on the ribbon, less a deduction for any hits that might have been made by persons betting on it, on that writer's pick-up route for that day. After these are tallied they are generally entered in some form of record that the banker might keep, that is a varied thing; then that night of the next morning these ribbons go back to the various pick-up men. These ribbons are the pick-up men's record of what he has turned in for that particular day and he can compute his earnings for that day from the ribbon. The check up as far as the money goes is generally made on a weekly basis. The writer generally collects from the player each day. The pick-up man may collect from the writer as he sees fit, because the pick-up man is going to be responsible to the banker for the amount of money shown due by that ribbon, so he has, whatever arrangements he might work out with his writer is the way he operates. He alone is responsible to the banker.

Q. He alone is responsible to the banker for what?

A. For the money, which is generally handled, as I said, on a weekly basis. Sometime during the week he will contact the banker or the banker will him and they will have a settling of their account for that particular week.

Q. Would the writer necessarily know who the banker was?

A. Not necessarily, they generally do, but they don't have to.

Q. They know which banker they are working for?

A. They generally do, yes, sir.

Q. How about the sack men, necessary for them to know who the banker is?

A. He very definitely would know because it is his job to deliver the sack to the banker.

Q. Now you mentioned a moment ago, I believe, something about layoff, what is a layoff?

A. Well I told you that a banker would accept any amount, a bet of any size that he felt that he could handle. He may accept any amount, that is if he has someone that he in turn can lay some of that money off to, some of that bet to. He might accept a bet of 111 for a hundred dollars and then felt that he is not able to take care of that, so he in turn will call someone in the lottery business who is bigger than he is, who is wealthier and able to take care of larger bets and he might lay off fifty dollars of that bet to that man. In other words, this layoff man will assume fifty dollars of that bet and he will keep fifty or he might lay the whole hundred dollars off to this bigger banker.

Q. If there was a hit on that number actually the original banker would have to pay the better?

A. That's right, the original banker would pay the better and the man who accepted the layoff would pay the other banker.

Q. Mr. Pair, geographically what area is generally covered by an operation such as you have described?

A. Well, it will take—er, places in a—usually a section of a city, a city the size of Macon, Georgia, might have four to five lottery companies operating in it. They generally speaking would each have a section of the town. However, that is not necessarily so. They may operate all over the town and into several little surrounding towns. Generally speaking though it wouldn't have a radius of over say twenty-five miles.

Q. Would one banker operate more than one lottery?

A. It would be possible, but I have never ran into that.

Q. You mentioned some sixty odd investigations that

you have made in connection with your work, Mr. Pair, I will ask you if the case presently on trial is one of those?

A. Yes, sir.

Q. When did you begin work on this assignment?

A. This particular assignment in May of 1955 I believe.

Q. Prior to that time had you known any of the defendants in this case?

A. Yes, I had known Mr. Clay prior to that time.

Q. Will you state whether or not you had occasion to discuss wagering and occupational and excise taxes with Mr. Clay?

A. Yes, sir, I have had occasion in the past to discuss it with him, once on July 8, 1953, and again on January 28, 1954.

Q. What was the nature of those discussions as relates to the tax?

A. I questioned Mr. Clay, I along with other agents who were present, questioned him as to whether or not he possessed a wagering tax stamp, and whether he was filing ten per cent excise tax returns, to which he replied on both occasions that he had not purchased a stamp, did not file excise tax returns, stating that he did not have to, he wasn't operating a lottery, therefore, he wasn't liable for these.

Q. Mr. Pair, what exactly did you do when you undertook this investigation, will you tell us about your investigation?

A. Yes, sir. The investigation, as I said, originated in May, 1955. The actual first real steps in the investigation started in June of 1955, when I started acting on confidential information that I had received in May, the information being to the effect that Mr. Clay was in the lottery business.

Mr. Watkins:

We object to that of course, Your Honor.

By the Court:

Yes, I sustain the objection to the information and you will pay no attention to that because it would be hearsay.

Q. Go ahead, sir.

A. On June 7, 1955, approximately that date, I contacted, along with Special Agent William A. Morris, contacted the telephone company here, Southern Bell Telephone in Macon, Georgia, and checked their files to determine who had the telephone listed at 3644 West Napier Avenue and also to get a record of the toll calls made from that address for the past six months. I obtained that information from them and secured a list of the toll calls. Immediately thereafter we started a surveillance of the area around 3644 West Napier, and at about 1:15 PM on June 7th, as I was driving down Napier Avenue at around the er, oh, I guess the thirty-five or six hundred block of it, I saw Mr. Clay driving toward Macon in a 1941 faded Buick automobile. I don't know what the color was, it is a faded blue or gray, very dirty looking car.

Q. Had you seen that automobile before?

A. Yes, I had seen the automobile before on several previous occasions with Mr. Clay driving it.

Q. That was prior to this investigation?

A. Yes, sir.

Q. Before you continue with that Mr. Pair, so we might have a little better chronology here, do you know where Mr. Clay was residing in 1954?

A. In 1954, part of it, he was residing at the corner of Oglethorpe and College.

Q. In Macon, Georgia?

A. Yes, sir, during the latter part of the summer of 1954, I observed his car on several different occasions at

the corner of Riverside Drive and College. I do not know that he was residing there however.

Q. That was in the fall of '54?

A. Yes, sir, in the latter part of the summer of '54 I believe.

Q. How long have you known Mr. Clay?

A. Since 1953, July of 1953.

Q. And up until the fall of 1954, to your knowledge where was he residing, in what city?

A. In Macon, Georgia.

Q. All right sir, would you go ahead, you were telling us, on June 7th of 1955?

A. Yes, sir, at approximately 1:15 PM I observed Mr. Clay driving down Napier Avenue toward Macon, Georgia, in this 1954 faded Buick automobile,. bearing license J-10196. I followed Mr. Clay and he proceeded to a Shell service station at 3102 Napier Avenue, parked the car, got out of the car, walked into the service station and stayed around several minutes, wandered in and out of the service station, and I noticed that a black Oldsmobile was being washed in the wash rack; the boys were just wiping it off and after some six or seven minutes they drove the black Oldsmobile out of the wash rack and Mr. Clay got into the Oldsmobile and left driving in the direction of Macon. I fell in behind him, followed him across town, across Macon and out the Gray Highway. He got out to the outskirts of Macon headed out the Gray Highway and he pulled into a burned out night spot on the right hand side of the road, approximately a mile out of Macon, and when he pulled in I went on by him, went out several blocks and turned around and come back and met him as he was going out the Gray Highway again. I again turned around and fell in behind him and followed him to the vicinity of the Jones County line where he pulled over to the side of the road, pulled

into a service station, I pulled into a service station, stayed there some couple of minutes and he pulled off. Traffic had me tied up for 30 or 60 seconds and when I finally got free to follow him I travelled at a high rate of speed to Gray, Georgia, but never did overtake him. So I abandoned down working on it for that particular day.

Q. What kind of automobile was he driving?

A. 1955 Oldsmobile Ninety-Eight. Black car, four door, white wall tires, spotlight on the left side, radio antenna on the left side.

Q. Did it have a license tag?

A. No license tag.

Q. And what happened to the '41 Buick?

A. When I left the Shell service station it was still parked there.

Q. Go ahead sir, what time of day was that?

A. That was at 1:15 when I first observed him. It was some fifteen to twenty minutes later that I had lost him.

Q. All right sir, go ahead.

A. On June 8, 1955, along with Special Agent Morris, we placed a section of the Gray Highway in the vicinity of the Jones County line where I had lost him the previous day under surveillance, pulled off to the side of the road into a little side road and about 1:15 Mr. Clay passed ahead toward Gray in the same 1955 Oldsmobile. We fell in behind him again that Day and followed him to the vicinity of the intersection of US 129 and 441, which is about three miles south of Eatonton, Georgia. Mr. Clay was driving at a rather high rate of speed that day and traffic was a little heavy at that intersection and we lost him. We again drove at a rather high rate of speed to catch him but after several minutes we didn't catch him and we didn't know whether he turned off so we dropped the surveillance again that day. The next

day, June 10, 1955, along with Special Agent Morris again, we found the Oldsmobile at 3:30 PM at the same Shell service station, went back out on the Gray Highway again and parked in a side road there and waited and at 4:50 PM Mr. Clay passed headed toward Gray again, driving the same '55 Oldsmobile. We fell in behind him and on this particular occasion we were able to follow Mr. Clay to the vicinity of five points, just at the outskirts of Athens, Georgia where we lost him again, due to traffic conditions. On this particular day we drove at speeds in excess of 95 miles an hour at times and Mr. Clay would get completely out of our sight, he would then slow down to 40 to 50 miles an hour, and that would enable us of course to catch up with him again. We maintained a good interval between the two cars in order that he might not become suspicious, but he was driving at extremely high speeds, and varying speeds.

Q. Let me understand that again, you said he would drive real fast?

A. Yes, sir.

Q. And how fast would he drive, how fast were you clocking him?

A. Well, we were driving a '54 Ford that would do about 97 miles an hour and he would completely out distance us on occasions, and then he would slow down, as I said, to some forty or fifty miles an hour.

Q. Have you in your experience ever encountered that kind of driving before?

A. Yes, sir, that is normal in the case of a person who is trying to see if anyone is following him.

Mr. Gautier:

If Your Honor please, I think we will object to that conclusion he might draw, from some other experience, I think that would be—he can state the facts and the jury can draw their own conclusion from it.

By the Court:

I think that would be better. Let the jury draw their own conclusions about that.

Q. Now that was on what day?

A. That was on June 9, 1955.

Q. And what did you do in Athens?

A. Well, we lost him, as I said, in the vicinity of five points, just on the outskirts of Athens, Georgia, and we first scouted the neighborhood where we'd lost him, that is cutting in and out of various blocks there in an effort to pick the car up again. We weren't successful and we sat down and started referring to some of the notes that we's made during our investigation, and found that in our check with the records of the Southern Bell Telephone Company, that Mr. Clay, or that the telephone at 3644 West Napier Avenue had been used on March 25—I am sorry, that date is not correct, I don't have the date on that, that telephone had been used to call an Athens number, the number that was called—

Mr. Gautier:

I don't believe there is anything in evidence as to any telephone records of any call from some number in Macon.

By the Court:

Yes, the record would have to speak for itself, would it not?

Mr. Thompson:

If the Court please, Mr. Pat Bray testified that the record of the telephone company covering toll calls during that period had been destroyed. He testified, the Court will recall, that the agents had called on him and he had made those records available to them. They had

asked him to save them but in some fashion they became misplaced or lost. We submit that in the absence of the records, and Mr. Bray said he didn't know where they were, he thought they were destroyed, that in the absence of those records the highest and best evidence is the secondary evidence of what Mr. Pair saw when he examined the records.

By the Court:

What do you say Mr. Gautier?

Mr. Gautier:

I don't know whether—I don't think there has been any evidence to show they were destroyed, if Your Honor please. There is no evidence to show that he made a copy of it. I don't believe anybody could just testify as to what they read about some record. There may be some other record Mr. Bray was talking about. I don't know, I don't think this evidence in its present shape could go in.

By the Court:

Well, you go ahead Mr. District Attorney and see if you can connect it up. Of course if this witness, I don't know what the facts are, but if a record is lost and destroyed and cannot be obtained then anyone can testify to the content of it when he he saw it, if he saw it.

Mr. Gautier:

That is your ruling?

By the Court:

Yes, sir, that would be the highest and best evidence.

Mr. Thompson:

I thought I have covered that, but before going further I'll ask Mr. Pair again. I believe he stated he began his investigation by checking the record of the telephone company.

Q. Just what information did you get?

Q. I checked the service applications for the telephone from the telephone company, obtained the telephone number, the subscriber's name, the subscriber's address, his place of employment, and the type of work that he did, the date the telephone was installed, I also asked for the toll tickets for that particular telephone for the past six months and received the toll tickets from the phone company and made notations of the phone calls that I thought might be of some interest to us.

Q. Are these your original notes that you made at that time, Mr. Pair?

A. Yes, sir, these on the back are, the one on the front, er—Mr. Bray I believe wrote that himself. The ones on the back in pen are what I transcribed from the record myself.

Q. And you wrote that contemporaneously while you were looking at the record?

A. Yes, sir, I did.

By the Court:

Now, are those records that Mr. Bray testified this morning were destroyed to the best of his knowledge?

Mr. Thompson:

Yes, sir.

By the Court:

Very well.

Mr. Gautier:

We are objecting to it Your Honor please.

By the Court:

But I overruled the objection and let him testify.

A. As I said, we checked over our notes and found that we made this transcription from the telephone company's records and that the telephone at 3644 West Napier had been used to call an Athen number, Liberty 6-6398, contacted the telephone company in Athens, Georgia and secured from them the listing of that phone. They made the record available to us and I found that the telephone was listed in the name of Clara Willis, and showed the address to be 140 Morton Avenue. The name—

Q. I'll ask you if this is the record, Govt. Ex. No. 4, is that the record that you examined on that occasion?

A. Yes, sir.

Q. All right sir, go ahead, what transpired after you got that information?

A. The name on the application was Mrs. Clara Willis, and from previous contacts with Mr. Clay, I knew that Clara Willis had been associated with him; and we proceeded out to 140 Morton Avenue, found the 1955 black Oldsmobile parked in the driveway.

Q. And on what date was that, Mr. Pair?

A. That was on June 9, 1955.

Q. Go ahead sir.

A. On June 10, 1955, we made a check of the area and found that a Mr. and Mrs. Anderson lived at that address, 140 Morton Avenue.

Mr. Gautier:

If Your Honor please, I don't think what he found out in the area would be admissible. I don't know who he might have talked to, that would be purely hearsay.

By the Court:
What do you say Mr. Thompson?

Mr. Thompson:
I might ask the witness where he found that out. I don't know, if the Court please.

Q. Did you determine that from any of the defendants in this case?
A. No, sir.
Q. Were any of them present when you determined that?
A. No, sir.

By the Court:
I believe I will exclude that then. It may be that you can prove residence by reputation, but I'll sustain the objection.

Mr. Thompson:
I don't insist on it.

By the Court:
I'll ask the jury not to consider that.

A. On June 14th was the next day that we had any activity on the investigation, and about 10:00 o'clock A.M. I dropped Special Agent Morris off in a position where he could keep 3644 West Napier Avenue under observation. I in turn went to a location where I could observe the Shell service station where Mr. Clay had been observed to switch automobiles. At 10:30 A.M. I saw Clay driving a 1954 Bel-Air Chevrolet hardtop, burnt orange and beige color.
Q. What was the license number?

A. I don't have it, did not get the license number of the car at that time. I did get it later. I don't have it in my notes right here I don't believe, sir.

Q. That was a 1954 Bel-Air?

A. Bel-Air hardtop, burnt orange and beige. I saw him at about the 3500 block of Napier Avenue. He was headed toward Macon, Georgia. He proceeded to the Shell service station at 3102 Napier Avenue and he had the Chevrolet serviced, talked to the operator of the service station there for several minutes and at 1:40 A.M. he headed out Napier, the same direction he had come in. At 12:20 P.M. I saw Clay—

Q. What was the time you said?

A. That was—I saw him first at 10:30 A.M. then he left the service station at 10:40 headed back the same way.

Q. Ten forty?

A. Yes, sir. At 12:20 P.M. I saw him driving toward town in the '41 Buick automobile that we'd seen him in previously, followed him again, changed—went to the Shell service station again, changed automobiles, got into the 1955 black Oldsmobile, left at 12:35 headed towards down town Macon. I made no attempt to follow him. At 7:00 o'clock that night I checked that service station and saw that the Buick automobile was still there and checked 3644 West Napier and saw that the Chevrolet he had been driving was parked there.

Q. Had you determined, Mr. Pair, who was living at the West Napier Avenue address you gave?

A. Through the—only through the telephone company records.

Q. Well, I would like for you, if you have your notes somewhere else and can give me the license number of that Chevrolet, I would like for you to just take a moment to get it.

(Witness got off the stand.)

Q. What was it?

A. The license number I have on that is Georgia '55, EX 60571.

Q. That was the '54—

A. The '54 Chevrolet.

Q. What was the next event of your investigation, Mr. Pair?

A. On the—after the surveillance work on June 14th, er, we determined that we had about three locations there that we needed to watch, to just get a complete picture of Mr. Clay's activities, so we contacted Special Agent Richard Lewis, who is stationed in Macon, Georgia, and asked that he assist in the investigation. We asked that he go to Athens, Georgia, and keep 140 Morton Avenue under surveillance while I maintained a surveillance on the Shell service station and Mr. Morris maintained a surveillance on the 3644 West Napier address. On June 15th was the next day we had any activity. I dropped Mr. Morris off in a position where he could watch 3644 West Napier, and at 11:00 A.M. Clay came into the Shell service station in the 1955 Oldsmobile from the direction of 3644 West Napier. He had the, er—he was driving the '55 Oldsmobile. He had the car serviced and in a few minutes he went back in the direction of 3644 West Napier. That was the extent of what I saw on that particular occasion. That afternoon I met Special Agent Lewis and advised him to return—

Q. Well, don't tell us any conversations that took place.

A. Well, I just asked him to go to Athens the next day again. On June 16th I again, at 10:08 AM observed Clay standing beside the 1941 Buick, on Napier Avenue, at 3760 Napier Avenue, it was parked on the side of the road and he was standing beside the car.

Q. What is that address, 3760 Napier?

A. That is the addres at which Mr. Clay at one time had a business place and residence. It had burned down at that time.

Q. Burned down at that time?

A. Yes, sir.

Q. Who was there with Mr. Clay?

A. He was by himself at the time I saw him.

Q. Just standing there?

A. Just standing there.

Q. Go ahead sir.

A. I went on to the Shell service station that particular day. At 11:50 A.M. Mr. Clay arrived at the service station in the 1941 Buick. He left at 11:15 A.M.

Q. What was he driving when he left?

A. He changed automobiles again to the '55 Oldsmobile.

Q. What was the license on the Oldsmobile?

A. The Oldsmobile did not have a license plate on it.

Q. All right, sir. Now, that was June 16th?

A. June 16th.

Q. That is 1955?

A. 1955. Later that evening I again met Special Agent Lewis and asked him to go to Athens, Georgia, again the next day. On June 17th I again had the Shell service station under surveillance.

Q. Where was Mr. Morris?

A. Mr. Morris on that patricular day was keeping 3644 Napier under surveillance again. At 12:15 PM I saw Mr. Clay arrive at the Shell service station in the '41 Buick. He approached from the direction of Macon. He left at 12:18 PM headed for 3644 West Napier in the '55 Oldsmobile.

Q. When you said he approached from the direction of Macon, you are in Macon all the time aren't you?

A. Well, on the outskirts of Macon and when I said from the direction of Macon, I meant from the down town area.

Q. Just where is 3644 West Napier?

A. It is at the corner of West Napier and Georgia Industrial Boulevard.

Q. In what direction is it from the center of town?

A. I would say, in a westerly direction.

Q. It is out towards the outskirts of town?

A. Yes, sir, towards the outskirts.

Q. All right continue your activity there on June 17th.

A. After I saw Mr. Clay leave in the 1955 Oldsmobile at the usual hour, I discontinued my surveillance for that particular day. On June 20, 1955, I was in a position on the Gray Highway, at er, about the Jones County line, and observed Mr. Clay at 1:05 PM in the 1955 Oldsmobile headed toward, er—in the general direction of Athens, Georgia. On June 21, 1955, we contacted, that is Special Agent Lewis, Morris and myself, contacted the United States Commissioner and made affidavits for a search warrant which was issued by the Commissioner. After the issuance of the search warrant for the premises of 140 Morton Avenue, Athens, Georgia, we went to Athens and at about 1:00 o'clock, 1:15, somewhere there abouts, we took up a position on Morton Avenue where we could observe the premises of 140 Morton Avenue and at about 2:40 PM Mr. Clay came down Morton Avenue driving the 1955 Oldsmobile, pulled into the driveway of 140 Morton Avenue. We pulled into the driveway behind him, and as we pulled into the drive he was getting out of the left hand side of the car. He had a brown paper bag in his hand and he stood there for a moment and watched us as we drove up and as we started getting out of the car he ran toward the house with the brown paper bag still clutched in his hand. Special Agent Lewis and myself ran after him. Just as he got to the porch of the house we grabbed him, Lewis grabbed him on one

side and I on the other. Our momentum sent us up against the wall of the house, and the brown paper bag that he had in his hand split open and several small packages inside fell to the floor of the porch. Agent Lewis picked up one of them and looked in it and said "this is it"—

(Mr. Thompson handed the witness an article.)

Mr. Watkins:

Your Honor please, at this point we want to interpose an objection to any further testimony in connection with the physical articles taken from the defendant Clay on this occasion on the same ground that have been interposed in the motions which Your Honor has already heard and ruled on. We simply want to preserve the record, and do not want by inaction and silence to prejudice any right that we might have under the motions already filed with the court.

By the Court:

Very well.

Mr. Watkins:

We object to it on the ground that it was illegally seized and taken from him in contravention of the provisions of the Fourth Amendment to the Constitution.

By the Court:

Very well, I overrule that objection.

Q. Go ahead.

A. As I said, Mr. Lewis picked up one of the packages that fell to the floor and looked in it, and said "this is it" and told Mr. Clay that he was under arrest. At

about that time Mrs. Anderson came to the door and asked what was going on. I asked Mr. Clay if he lived there He said no he did not. I asked her if she lived there. She said yes she did. I told her I had a federal search warrant to search the premises, told her that I was a federal officer, showed her my credentials and asked that she open the door, screen door which was hooked. She refused to do so, and Mr. Clay advised her not to open it, saying that we had no right to go in. At that I jerked the screen door off its latch and Special Agent Lewis and myself entered the house.

Q. Well, now before we go into the house you were testifying with reference to a brown paper bag that Mr. Clay had in his hand, do you have that there, Mr. Pair?

A. Yes, sir.

Q. Is that the bag that is visible to me now?

A. It is not the outside bag, that is a government envelope. The bag which was taken from him is, has been kind of torn up. It was torn when we caught him, and that is where it split and the other things fell out. It had several small packages inside.

Q. I wil ask you to examine the contents of this government envelope and tell me just exactly what it is.

A. The contents of the envelope are original lottery tickets, the original ticket that I previously told you reaches the banker's hand for him to make his bookkeeping records from.

Q. Now, how many are those, are they in several packages?

A. They are in separate packages.

Q. How many?

A. There are six separate packages.

Q. Now, is all this material that you have here the material that was in the bag at the time that Mr. Clay had it?

A. That's correct.

Q. How about these tapes?

A. The actual adding machine tape is where one of our agents added the tickets up to see what the total would be.

Q. Then the tapes themselves weren't in there?

A. The adding machine tape is not a part of the evidence.

Q. I would like to have this identified as Govt. Ex. No. 14. Government envelope containing a brown paper bag and 1, 2, 3, 4, 5, 6, separately wrapped packages. These adding machine tapes are just on there for convenience. We will remove those in the course of time.

Q. Mr. Pair, I am going to ask you to open one of those smaller packages there. (He did) Just exactly what is contained in it?

A. These are original lottery or bug tickets.

Q. Just hand me one such ticket. Are these tickets that you find there similar to those that you described earlier as being the usual ticket that was used in a lottery operation?

A. Yes, sir, they are.

Q. All of those packages contained—

A. All the packages contained original lottery tickets.

Q. Have you examined those?

A. Yes, sir, I have examined them.

Q. Was there anything else in that bag at the time Mr. Clay got out of the car and went up on the porch with it?

A. No, sir, not in that bag, nothing but original lottery tickets.

Q. Who all was present with you at that time?

A. Special Agents Morris and Lewis.

Q. All right sir, go ahead and tell us what happened following that.

A. As he entered the house I attempted to serve the search warrant on Mrs. Anderson and she refused to accept it. I laid a copy of the search warrant on the TV in the livingroom of the house, told Mr. Clay to sit down in the livingroom, and Mrs. Anderson—

By the Court:
Louder, please.

A. Mrs. Anderson at that time advised that she had just been released from the hospital, was feeling badly. I asked her for the name of her doctor, that I would call him and have him out to the house, and told her that she could go into a bedroom and lay down. She did go into a bedroom and lay down, but she did not give us the name of the doctor, stating that there was no use to call him. Agent Lewis stayed in the livingroom with Mr. Clay. Special Agent Morris and myself began a search of the house. In a hall closet in the house—

Mr. Watkins:
Your Honor, at this point we object to this witness testifying as to anything that was taken and seized from the house on the same ground that we have heretofore asserted in the motions which were filed with Your Honor last April, I believe.

By the Court:
That is the same motion we have already heard and passed on.

Mr. Watkins:
Yes, sir, just want our rights preserved. We have already raised the question, we object to any testimony from this witness regarding anything he or any other officer

there on that occasion saw in or took from that home, on the grounds that the search was illegal for the reason that it was violative of the rights of these defendants under the Constitution and the Fourth Amendment, particularly.

By the Court:

Very well, I make the same ruling I made when the motion was heard and passed on, and I overrule it.

Q. Go ahead.

A. Special Agent Morris and myself began a search of the premises. In a front bedroom of the house, the room which Mrs. Anderson said was her bedroom, we found a desk. On the desk was two Remington-Rand printing calculators. In the closet of the room we found men's clothing with letters in the pocket of the clothing addressed to Will Parks Clay.

Q. At what address?

A. At er, a P. O. box in Macon, Georgia. We continued our search of the premises and in a hall closet just outside the bedroom we found ten, these ten cases of original lottery writer books and a partial case of lottery writer books.

Q. Mr. Pair, I am going to ask you to examine these ten cases that are here and tell me whether or not these are the same cases that you found on that occasion.

(Witness left the stand to look at cases.)

A. Yes, sir, those are the cases that we found in the hall closet.

Q. That was at 140 Morton Avenue?

A. One-forty Morton Avenue. Also in the hall closet at 140 Morton Avenue we found a large paper bag of coins and currency wrappers.

Q. Do you have that here?

A. Yes, sir, that is under the table over here, sir.

(Witness left the stand again to examine bag.)

Q. I am going to ask you, if you will, first while you are down here, if you will segregate these boxes and see if we can get these ten boxes separated from everything else so we can have them identified as an exhibit.

Mr. Thompson:

We would like to have these ten boxes, of what you say contain lottery writer books, identified as the next government exhibit.

The Clerk:

That will be Govt. Ex. No. 15.

Q. In addition to the ten cases of writer lottery books, what else did you say?

A. One partial case, a case that had been opened and some of the books removed.

Q. I will ask you to examine this.

A. I have already examined that, that is the carton there.

Q. Now, Mr. Pair, is it in the same condition now it was then?

A. Yes, sir, I believe so.

Mr. Thompson:

I would like to have one box partially full of what has been identified as lottery writer books identified as the next government exhibit.

The Clerk:

Sixteen.

Q. All right sir, and what else did you find?

A. The paper bag full of coins and currency wrappers.

Q. Do you have that, sir?

A. Yes, sir, I put these in the bag in the box, it is torn. That is the material there.

Q. The box?

A. No it was, this paper bag, the bag had been torn and we put it in the box to keep it from being lost.

Mr. Thompson:

I would like that identified as the next government exhibit.

The Clerk:

Govt. Ex. No. 17.

Q. And what else, Mr. Pair, did you—

A. We found, in a different part of the house, we found I believe eleven rolls of adding machine tape for the Remington-Rand printing calculator.

Q. Do you have that here?

A. Yes, sir, that is the box right here. (Witness got off the stand again.)

Mr. Thompson:

Hand that to the Clerk, please.

The Clerk:

Govt. Ex. No. 18.

Q. You were testifying a moment ago with reference to a ribbon, now just what is a ribbon?

A. As I said, the banker in his bookkeeping operation at headquarters runs an adding machine tape on the tickets that each pick-up man turns in. This adding

machine tape is known as a ribbon. It contains the total bets for a day, less the writer's commission of 25%, shows the date on it, and the winning number for that day and any hits for that particular day and the pick-up man's code name.

Q. What else did you find there?

A. We found several, these particular notes that I have here, I don't have the number, but a number of—the number, but a number of cloth bank sacks.

Q. Are those here now?

A. Yes, sir, they are here.

Q. Would you see how many there are, sir?

A. Fourteen.

Q. Fourteen money sacks?

A. Yes, sir.

Mr, Thompson:

Ask the Clerk to identify fourteen sacks as the next exhibit.

The Clerk:

Govt. Ex. No. 19.

Q. And what else did you find there?

A. We also on the desk in the bedroom, front bedroom, we found two pairs of binoculars sitting with the Remington-Rand printing calculator. In the desk we found several small record books.

Q. Did you examine those books, Mr. Pair?

A. Yes, sir, we examined them. We did seize them and later examined them. We also found, I believe it was two used check b'ooks, that is all the checks had been used in them, but did have the stubs there, one deposit bank book, and

Q. I hand you four items there and ask you if those are the books you are talking about?

A. Yes, sir, these are the check books, two of them completely used, a bank deposit book, and another check book with part of the checks used and some remaining checks. The remaining checks are blank checks, but they have been signed by Mrs. Clara C. Willis. The checks are on the National Bank of Athens.

Mr. Thompson:

I would like to have this check book, with signed checks Clara C. Willis, identified as the next government exhibit.

The Clerk:

Govt. Ex. No. 20.

Q. Those other two are what?

A. They are used with only the stubs remaining. This is a bank deposit book for the National Bank of Athens.

Q. In what name?

A. Mrs. Clara C. Willis.

Mr. Thompson:

I would like to have the bank deposit book with the National Bank of Athens identified as the next government exhibit.

The Clerk:

Govt. Ex. No. 21.

Q. Mr. Pair, what else, if anything, did you find there as a result of that search?

A. We also, at that particular time, found a strong box under the bed in the front bedroom of the house, strong

box contained miscellaneous insurance policies and notes receivable, and two bundles of money, one bundle containing 95 twenty dolar bills, 11 one hundred dollar bills; another bundle containing 50 twenty dollar bills, and this money was also seized under the search warrant at that time.

Q. What was the total amount of that money?

A. I'll have to figure it up for you. In the neighborhood of $5,000. (Figuring it up.) Four Thousand Dollars.

Q. Four Thousand Dollars?

A. Yes.

Q. Mr. Clay, I mean Mr. Pair, did you have any conversation with any of the defendants on that day?

A. I talked to Mrs. Anderson. I asked her who the desk belonged to, who the adding machine belonged to, and who the lottery writer books belonged to, and she stated that she didn't know whose they were, that they were in the house whenever she moved in, and she just assumed that they belonged to the previous owner of the place. I also talked to Mr. Clay. I asked him about ownership of the same property. He denied ownership of it. A little later in the search of the house, I also searched Mr. Clay, and at that particular time I asked him again about whether or not he had a stamp, or whether he was paying 10% excise tax and he said no that he was not, and he wasn't operating a lottery illegally, and he thought I knew it. I asked him to enlarge on that, but he refused to do so. He did deny that he lived in the place, he said he was only coming in there to visit Mrs. Anderson, who was a friend of his.

Q. And what action did you take at that time?

A. Well, after we had searched the premises, secured the items that we felt that we should seize under the search warrant, we took Mr. Clay to the Clarke County, or actually to the United States Commissioner first and then to the Clarke County Jail.

Q. I will ask you did you participate in the search of the automobile?

A. No, sir, I did not.

Q. Go ahead, sir.

A. After we, the next day, the following day, that would be on the 22nd, we er—Agent Lewis and myself went back to Athens, to take care of the necessary paper work on the 1955 Oldsmoblie which we had seized for being used in a lottery operation, and as we were returning to Macon, Georgia, at approximately 5:30 or 6:00 o'clock on the northern outskirts of Eatonton, Georgia, we met Mr. Clay driving the burnt orange and beige 1954 Chevrolet hardtop, which I have mentioned previously.

Q. Which direction was he going in?

A. He was heading in a northerly direction toward Athens, Georgia.

Q. Eatonton and Gray, are they cities between Macon and Athens?

A. Yes, sir.

Q. Go ahead, sir, and what was the next step of your investigation?

A. The next step of the investigation was on June 28, 1955, at which time I arrested Obie Dudham at College and Georgia Streets in Macon, Georgia. I stopped Mr.—Obie Durham and searched his automobile and found a package containing original lottery tickets back behind the dash of the automobile and up on top of the glove compartment in a very hidden place.

Q. That is the item you are talking about in your hand?

A. This is the bag that I found there. It is a brown paper bag containing three separate packages of original lottery tickets.

Mr. Thompson:

I would like to have this identified as the next government exhibit, please.

The Clerk:

Govt. Ex. No. 22.

Q. Now this was the er, that Govt. Ex. No. 22 contains what, sir?

A. Contains three separate packages of original lottery tickets.

Q. I would like for you to open one of the smaller packages, if you will sir.

(Witness complied.)

Q. Let me see what the contents of it are. Mr. Pair, have you, what are the dates on all of these tickets that you got from Obie Durham?

A. The dates on the tickets from Obie Durham are June 28, 1955.

Q. Have you compared the lottery tickets that you got off of Obie when you arrested him with those that you got off of Mr. Clay when you arrested him?

A. Yes, sir, I have made a comparison of those.

Q. You have previously made a comparison of them?

A. Yes, sir.

Q. What was the result of your comparison?

A. Special Agent Lewis and myself made a comparison of those tickets. We found that the writer symbol numbers on numerous of these tickets were the same writer symbol numbers. I have the symbol that are used on both tickets that we seized from Mr. Clay and on tickets seized from Obie Durham.

Q. Tell us what similarity—

A. All right, the same writer number, being M8 and 001.

Q. Well wait, let's stop there with M8. You found in the block that is, let me see one of those again, if you will sir. Incidentally, are these tapes presently on the tickets, were they on there when you seized them?

A. No, sir, they were not, those are for our own computations.

Q. The tapes that are found in both of these bags then, the ones taken from Mr. Clay and the ones taken from Obie Durham, the tapes that are found in there are not part of the exhibit, is that right?

A. That is right.

Q. You have added those?

A. We have added that.

Q. Now, where did you find the lottery writer number?

A. In the top right hand corner in the little block and on this particular ticket the writer number is C-110.

Q. And the same type ticket was used or was seized from Mr. Clay, is that right?

A. Yes, sir, there were tickets in the bundle of tickets from Mr. Clay bearing that same writer number.

Q. Now, can you tell us from your examination of all of those exhibits, you have previously examined them have you not sir?

A. Yes, sir.

Q. What is, what same symbols did you find in the two separate sets?

A. As I said, we found instances of nine different writer symbols appearing on both tickets from Mr. Clay and from Obie Durham. We also found instances where the same book number would appear on tickets seized from Mr. Clay and on tickets seized from Obie Durham.

Q. How many instances did you find the same book number?

A. Seventeen of the books used to write tickets in Mr. Clay's bundle were also used to write tickets in Obie Durham's bundle.

Q. When you refer to the serial number you still have—this is one of the tickets from Govt. Ex. No. 22?

A. Yes, the serial number is in the lower left hand corner. The number on the ticket you are holding is 22495, you will note then there is a dash then and a 10, the 10 is the ticket number. The 22495 is the book number.

Q. I will hand you, I will select a book here at random from Govt. Ex. No. 16, which is a partially filled box of books, and ask you to show me on that where the book number is.

A. Book number is in the lower left hand corner. The book number of this particular book being 49107.

Q. I am going to ask you, just for future reference, if you will initial that front cover of that book.

(Witness complied.)

Q. And there is a dash after that number, sir?

A. Dash after that number, and then the ticket number appears.

Q. Now, am I correct here that there are three tickets, with page number 1?

A. Yes, sir.

Q. Then how many instances did you find the same number on Obie Durham tickets as you found on the tickets you took off of Mr. Clay?

A. Seventeen of the same books were used for both. There are numerous tickets in there that bear the same ticket number, but there are seventeen actual books used to write tickets in both Clay's bundle and Durham's.

Q. Thit is the serial number as opposed from the ticket number?

A. Right.

Q. And the dash after the serial number just gives you the page number of the book?

A. That's correct.

Q. And in how many instances did you find the use of the same writer number, the same writer symbol?

A. Nine of the same writers wrote tickets in Clay's bundle as wrote tickets in Durham's bundle.

Q. I notice Obie Durham's bundle is much smaller than the other bundle. Is there any significance to that, sir?

A. Yes, sir, it ... ans that it is possible that only a part of the tickets had been picked up at the time Obie Durham was arrested.

Q. Could be that he was the sack man too, couldn't it?

A. Yes, sir.

Q. Mr. Pair, what is the next step in your investigation, sir?

(Recessed from 3:30 PM to 3:50 PM.)

Q. Just before the recess, Mr. Pair, we had been discussing these so called lottery writer books. Er, again I want to ask you about the serial number, you have one up there, I believe.

A. Yes, sir.

Q. Read the serial number on that one you have. Is that the one I asked you to initial?

A. No, sir, it isn't.

Q. Use if, if you will.

A. The serial number of this particular book is 49107.

Q. Now is there a dash after that number?

A. There is a dash.

Q. And what appears after it, after the dash?

A. The first page is 1, that will be the ticket number, the first three pages in this book will be numbered 1,

the next three pages will be numbered 2, but all the way through that book will bear the same book number, 49107, the page number is the only thing that would vary for that particular book.

Q. Then if you had some page number bearing that serial number in the stack of lottery tickets that were taken at the time Mr. Clay was arrested, and some that were in the group of tickets that were seized from Obie Durham, would those have come from the same book?

A. They would.

Q. Do you know whether or not you have the same serial number in more than one book?

A. I have never seen two books bearing the same serial number.

Q. Now, to continue with your investigation Mr. Pair, what was the next step you took after the event that you have testified about?

A. The next step was to get the evidence together and into a presentable form for a report and in so doing, we, of course, found that certain things were lacking, one of which was the identification of these boxes of writer lottery books here. They had a label on them which had been partially obliterated, apparently by a wet rag.

Q. I am going to hand you, or display to you, one of these boxes from Exhibit No. 15 and ask you, if you will, to come down and identify the label you are talking about.

A. The label I am speaking of is on the corner here, on this particular one you can see a SW, and you can see a Ga on that particular one, you can see, make out about three letters on the left hand corner that have apparently, is an address label on that box. We attempted to make a composite picture of those labels by taking thin tissue paper and putting it under good light and moving that same paper from box to box in an attempt to come up with a complete address, and while we were

doing that, we were also going through a—the rest of the file, and we found that the telephone at 3644 West Napier and the telephone at 140 Morton Avenue had both been used in March of 1955 to make long distance toll calls to a Mrs. C. C. Rawlins in Atlanta, Georgia. We contacted the Atlanta office of Bell Telephone and gave them the telephone number which had been called from these, this Macon address and from the Athens address, that number being Raymond-1787. The telephone company in Atlanta, Georgia, furnished us with the name and address of the party having that telephone, which was Mrs. C. C. Rawlins of Belvedere, South West, Atlanta, Georgia. Agent Morris and myself went out to Mrs. Rawlins' home and questioned her concerning the boxes of lottery writer books. She came down to our office and made an identification of the boxes, as being boxes that she had sold.

Q. Well, now were you ever able to complete your address from these labels?

A. No, sir, we were able—we had it partially completed and we could see that some of the same numbers and letters fitted in with the address we got from the telephone company, so we just abandoned that end of it and went out and talked to her, where she gave us direct evidence on it.

Q. These are the same boxes that you seized at Clay's house in Athens, Georgia?

A. These, those are the boxes that came from the hall closet at 140 Morton Avenue.

Q. Did you then make any further investigation, Mr. Pair?

A. We closed our investigation at that time with similar facts presented in a report, Mr. Thompson.

Q. What disposition was made, if any, of the Oldsmobile that was involved?

A. Libel proceedings were filed against the '55 Oldsmobile and it was tried in—

Mr. Gautier:
If Your Honor please, we will object to any civil proceedings about an automobile.

By the Court:
Would that be material, Mr. Thompson, and relevant?

Mr. Thompson:
Well, if the Court please, I propose to show that the automobile was seized and a libel was filed against it and nobody came forth, involved in this case, to claim it, which we contend would an admission against the interest of the parties involved if they didn't come in to claim the automobile that was seized for operating a lottery.

Mr. Gautier:
That was a civil action, that wouldn't be any admission against their interests.

Mr. Thompson:
We won't insist on that, if the Court please.

By the Court:
Very well.

Mr. Thompson:
The witness is with you.

Mr. Watkins:
Your Honor please, we would like to have an understanding with the Court that by cross-examining this witness we are not waiving any rights we heretofore

asserted as to the illegality of the search that was conducted by him and the other officers.

By the Court:
Well, what does the law say about that?

Mr. Watkins:
I don't think we do waive them. We want that understood. We don't have to give up any rights.

By the Court:
I think I'll leave that entirely optional with you. Whatever the law is we will just abide by the law .

Mr. Watkins:
Well, we are satisfied, Your Honor, that we do not thereby waive any rights the defendants have.

By the Court:
Well, nothing I would say or do would affect that one way or the other then. You just proceed according to your legal right.

Cross Examination.

By Mr. Watkins:
Q. Mr. Pair, In your testimony concerning the observations of the defendant Clay in the case beginning on June 7, 1955, I believe that was the first date that you said you observed him here in Macon?
A. That's correct.
Q. June 7th?
A. June 7, 1955.
Q. And at that time you saw him driving a '41 Buick?
A. Yes, sir.

Q. And saw him also get into an automobile out at the Shell service station on Napier Avenue?

A. Yes, sir.

Q. And headed out toward Gray, Georgia?

A. Yes, sir.

Q. And that was all you saw that day?

A. I saw him making the stop out on the Gray Highway, making two stops on the Gray Highway and then proceeding on.

Q. You did not follow him any further?

A. I was unable to do so, I attempted to.

Q. Did you testify or not that you saw him do anything other than drive the cars that you spoke of?

A. I saw him drive the car into the Shell service station, wait until the Oldsmobile was finished being washed, drive it off, make the two stops on the Gray Highway and then I lost him.

Q. Did you see him get into the Oldsmobile at the service station?

A. Yes, sir.

Q. And that was all that you observed?

A. Yes, sir, that is correct.

Q. Just saw the man get out of one car and wait until the other car was serviced or washed and get into it and drive off?

A. That's correct.

Q. You made, now where were you when you made that observation?

A. I was driving down the—down Napier in the direction toward Macon, toward down town Macon, when I first saw Mr. Clay. When he entered the Shell service station there is a super market directly across the street or diagonally across the street from the Shell service station, I entered the parking lot of the super market and observed him from there.

Q. You saw him get into the other car and drive off?

A. Yes, sir.

Q. And that was all you saw?

A. And saw him drive out the highway and make the two stops on the highway and lose me in traffic, yes, sir.

Q. And the next day on June 8th, did you testify you saw him at the Shell service station?

A. On June 8th, I don't believe so, sir, I was stationed at a point on the Gray Highway, fell in behind him as he passed and following him in the vicinity of Eatonton, Georgia.

Q. On that occasion you simply saw him in an automobile?

A. That's correct.

Q. And that is all you saw?

A. Driving at high rates of speed and varying speeds, as I said.

Q. And on June 9th did you again see him at the service station on Napier?

A. I did not see him. I saw the car at the Shell service station on Napier.

Q. And you followed him up to Athens on that occasion?

A. After I saw the car at the Shell service station on Napier I took up a position on the Gray Highway, along with Special Agent Morris, and as he passed that location we followed him to the outskirts of Athens, Georgia.

Q. Well, you didn't see him except in an automobile on that day did you?

A. I saw him in an automobile, that's correct.

Q. And then I believe you saw him next on the 14th day of June?

A. That's right, sir.

Q. And he was in a 1954 Bel-Air Chevrolet?

A. Yes, sir.

Q. At the Shell service station on Napier Avenue?

A. That's correct.

Q. Did he get into the Oldsmobile automobile that you testified about on that date?

A. No, sir, he had the 1954 Chevrolet serviced and left in the Chevrolet.

Q. Did you see him get out of the Chevrolet?

A. Yes, sir, he stayed at the service station there and talked to the operator for about ten minutes.

Q. And then got back into the car?

A. Got back in it.

Q. Left and headed iin which direction?

A. Out away from town, out Napier away from town.

Q. You did not follow him on that occasion?

A. No, sir, I did not.

Q. Then on June 15th, you were again at the Shell station on Napier?

A. There was some more observation on the 14th.

Q. By you?

A. Yes, sir.

Q. What was it?

A. At 12:20 PM Mr. Clay came back to the Shell service station in the '41 Buick, and switched to the 1955 Oldsmobile.

Q. Did you see him get out of the Buick?

A. Yes, sir.

Q. And into the Oldsmobile?

A. I don't believe I saw him get in the Oldsmobile. Part of the time, Mr. Watkins, the Oldsmobile would be parked behind other cars, or back to the back part of the station where it was difficult to observe it.

Q. You didn't see him have anything in his hand when he got out of the car did you?

A. No, sir, I did not.

Q. On any of these occasions that you have testified about?

A. None of the occasions, that's correct sir.

Q. And on June 16th, er—you saw him at 3760 West Napier. Is that the only place you saw him that day?

A. On the 16th? No sir, I saw him arrive at the Shell service station at 11:50 in the Buick, make the—and make the trade again.

Q. Did you see anything in his hand on that day?

A. Er, Mr. Watkins, on none of the occasions that I saw Mr. Clay at the service station did I see anything in his hand. As he would get from the—out of the car and walk to the other car from where I was watching generally only side would be exposed, I could see one hand in other words, as to whether something was in the other hand I could not say, but from my position I would have a side view of him on just about every occasion, but I never saw anything in his hand.

Q. Well, then he didn't have anything in his hand on any of those occasions in getting from one car to the other isn't that true?

A. I repeat that the hand that I saw had nothing in it, I saw nothing in his hand.

Q. What about the 17th, you again saw him at the Shell service station didn't you?

A. Yes, sir.

Q. And saw him make the change from one car to the other?

A. Yes, sir.

Q. And the same thing is true as to him taking anything out of one car and putting it into the other, you didn't see him do that?

A. Again we have the same set of circumstances, I saw one side view of him.

Q. Now the remaining, the only other observation you made was in—on the 20th of June in Jones County prior to his arrest?

A. On June 20th, yes, sir, I watched him going toward Gray, Georgia.

Q. He was, of course, just in an automobile and you don't know, didn't see him with anything in his possession at that time?

A. No, sir.

Q. Now, on the 21st of June you and Mr. Morris and Mr. Lewis?

A. Yes, sir, Lewis.

Q. Did you all come down here to the Courthouse and get Mr. Doyle, the Commissioner, and make some affidavits and have him issue a search warrant?

A. That's correct, sir.

Q. Was that search warrant sought for the purpose of permitting you to search the house at 140 Morton Avenue in Athens, Georgia?

A. Search warrant was for the search of the premises at 140 Morton Avenue, Athens, Georgia.

Q. Now, at the time you obtained that search warrant Mr. Pair, had you made enough investigation to determine who resided at 140 Morton Avenue in Athens?

A. We felt that we had. Er, not myself.

Q. I mean all of you officers that were instrumental in getting this purported search warrant had been making some investigation had you not?

A. Er, yes sir, there had been inquiries made.

Q. Well, actually didn't you know who lived at this address in Athens, 140 Morton Avenue at that time?

A. We felt that we knew one person who lived at that address. We also thought there were other people living there.

Q. You did not see fit however to secure a warrant which would state the name of the person occupying the premises, you just left that blank?

A. We thought that the warrant for the premises at 140 Morton Avenue—

Mr. Thompson:

If the Court please, I object to the line of questioning. The Court has ruled on the sufficiency of the search warrant and ruled that it was good and it is not a question to submit to the jury as to whether or not the search warrant was good.

By the Court:

I am sorry I didn't hear the question or objection, I was signing a paper for the District Attorney. What was the question?

Mr. Thompson:

Counsel is pursuing a line of questioning that I have not objected to up until now, pointed up to show apparently that the search warrant had only an address on it and not by name. We submit that legally it is not necessary for it to have a name on it. The Court has ruled so, and the question posed can only be for the purpose of showing whether or not the search warrant was sufficient, that question has been decided as a matter of law by the Court and questions along that line are improper.

Mr. Watkins:

I think that argument is entirely improper in the presence of the jury, but it has been made and I would say this Your Honor, this man is on cross examination and we have a right to know in this case whether he knew who lived in the house at the time he asked for a warrant. If he did we think we have the right to know why he didn't specify the person as being a resident there, whether it is necessary or not.

By the Court:

Very well, go ahead.

Mr. Watkins:

Might be some reason we don't know about.

By the Court:

He is on cross examination, go ahead.

Q. Well, it was your intended purpose that morning when you came down here to get a search warrant to go to Athens and search the house and to search the defendant Clay, wasn't it, if he came up there?

A. No, sir, it was not my intention to search the defendant Clay unless I had ample grounds to arrest him and then search him. The warrant was for the purpose of searching 140 Morton Avenue.

Q. Now, how many times had you followed him to Athens prior to the 21st of June?

A. I had followed him one time.

Q. How many times had any other officer that you knew about followed him?

A. No one had followed him to my knowledge other than Mr. Morris and myself the one time.

A. And Mr. Morris had been in Athens at your direction hadn't he?

A. Mr. Morris had not, Mr. Lewis had been in Athens.

Q. And you had been in contact with him hadn't you?

A. That's correct.

Q. And you anticipated that you were going to see the defendant Clay when you went to Athens that day?

A. If he followed his routine pattern that he had set we would see him, yes sir.

Q. But you didn't ask Mr. Doyle, the Commissioner, to issue you any warrant for his arrest?

A. No, sir we did not.

Q. Did you just overlook doing it?

A. No, sir, I did not feel that it was necessary.

Q. Yes, sir, thought you could arrest him without a warrant?

A. If I had the probable cause, yes sir.

Q. One thing I wanted to ask you Mr. Pair, what time did you testify, I didn't get it, that you arrested Obie Durham on the 28th of June, 1955, I believe it was about noon?

A. I believe it was approximately noon of June 28, 1955.

Q. And where in Macon was it that you arrested Obie Durham?

A. Corner of College and Georgia Avenue.

Q. And what kind of automobile was he in when you arrested him?

A. It was a 1946 Plymouth, I believe sir.

Q. And where were the tickets that you testified about?

A. The tickets were back behind the dash and over on top of the glove compartment.

Q. Was he arrested?

A. He was arrested after the search of the automobile revealed the tickets.

Q. Was a case made against him?

A. Yes, sir.

Q. Has the case been prosecuted?

A. To the best of my knowledge the case is in the United States Attorney's Office of the Northern District of Georgia.

Q. In Atlanta?

A. Yes, sir.

Q. And you don't know what is being done with it?

A. No, sir, I don't.

Q. Is he here today?

A. At this time I don't know. I believe he was in the hall earlier in the day.

Q. You have seen him around?

A. Yes, sir, I think he was out there this morning.

Q. He is not a defendant in this case though is he, you know that?

A. No, sir, he is not.

Re-Direct.

By Mr. Thompson:

Q. Mr. Pair, do you know of any relation between or kinship between Will Parks Clay and Mattie Bell Anderson?

A. The only thing I know Mr. Thompson, is that I have watched the house at the corner of College and Oglethorpe, I have observed that Mattie Bell Anderson lived there, I have seen Mr. Clay come in at 9:30 and 10:00 o'clock at night, I have observed the house when lights went out in the—

Q. You don't know though whether or not they are related in any way do you?

A. No, sir, I don't.

Q. Do you know whether or not Mary C. Cotton and Alvin Q. Cotton are related in any way?

A. According to Mrs. Cotton's statement, only husband and wife.

Q. And how about Mrs. Clara Willis Cravey, is she related to any of the defendants?

A. From the statement of the defendant Mattie Bill Anderson, Mrs. Anderson stated that Mrs. Willis was her mother.

Q. This Oldsmobile that you saw parked at the Shell station, did you ever search it before Mr. Clay got in it?

A. No, sir.

Q. You know what was in it when he got in there?

A. No, sir.

Q. Can you state definitely he didn't put anything else in there or anybody else didn't?

A. No, sir, I could not make a definite statement on that.

(Witness excused.)

MR. WILLIAM A. MORRIS, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Mr. Morris, will you state your full name, sir, and your address and occupation?

A. I am a Special Agent with the Treasury Department, Intelligence Division, Internal Revenue Service. My full name is William A. Morris. I live in Atlanta, Georgia, 2630 Cascade Road, Southwest.

Q. How long have you been with the Internal Revenue Service?

A. I have been with the Internal Revenue Service since 1948. I have been a special agent doing this type of work since 1951.

Q. Do you work with Mr. Pair here?

A. Yes, sir, that is correct.

Q. Been working with him?

A. Yes, sir.

Q. Any connection between his crew cut and yours?

A. Well, yes, sir, a slight connection. Mr. Pair and I are working on an undercover assignment in a different location at the present time and we had our hair cut in this manner in connection with that undercover assignment.

Q. Approximately how many cases of different kinds have you investigated since you have been a special agent, since '51?

A. Well, that would be difficult to estimate. We worked various and varied types of investigations. In so far as this particular type of investigation is concerned I would say I'd made not less than a dozen investigations.

Q. Lottery investigations?

A. Yes, sir.

Q. When did you first become interested or assigned to this case?

A. I was assigned to work with Mr. Pair on this case on June 6, 1955.

Q. Will you tell us about your investigation, Mr. Morris?

A. Well, Mr. Pair and I had received confidential information and acting upon this—

Mr. Watkins:

We object to the receipt of confidential information and move to strike that out.

By the Court:

I sustain that motion. The content of it would be hearsay, so it may be immaterial as to where they receive it.

Mr. Thompson:

We didn't want to go into the content, just trying to find a beginning point.

By the Court:

All right.

A. Well, on June 6, 1955, I checked the records of the District Director to ascertain whether or not Mr. Clay had purchased an occupational gambling stamp or had registered as a person engaged in the business of accepting wages. I found that he had not purchased a stamp as of that date.

Mr. Gautier:

If your Honor please, without going through repetition we raise that same objection in Mr. DuBignon's case, we raise the same objection to his testimony about searching the record.

By the Court:

Very well. I make the same ruling.

Q. Go ahead Mr. Morris.

A. Agent Pair and I then proceeded to Macon and began our investigation here in the Macon vicinity. On June 7, 1955, we placed a location on the Emory Highway near Macon Street, which is a colored restaurant, under observation, and we observed a colored male driving a 1939 Buick automobile as he stopped at this location and picked up what appeared to be a sack of the type and size generally used in lottery operations and drove away from that location. Agent Pair and I then trailed this automobile away from that location to the intersection of Riverside Drive and Ingleside Drive in Macon.

Q. What did you observe there at the restaurant, sir?

A. We saw from our position this 1939 Buick automobile, a very faded colored Buick, as it made a momentary stop in front of his business establishment, this colored restaurant. We saw some person approach that car and saw what appeared to be, of course we were

watching from a distance, what appeared to be a small parcel go into the automobile. We then saw the automobile drive away and we followed the vehicle away from that location.

Q. Could you identify the driver of that automobile?

A. I did not positively identify the driver at that time. I later did identify the driver as being the same person that we encountered later in our investigation.

Q. Who was that?

A. That was Obie Durham.

Q. This automobile that he was driving, did you get the license number of it?

A. Yes, sir, I did get the license number of that vehicle. I'll see if I have it in my notes here. I don't seem to have that particular number in here. That was the only time during this investigation that we did see this old 1939 Buick. I don't have it in these notes. Although I am certain it's in the file somewhere.

Q. And that was Obie Durham driving?

A. Yes, sir.

Q. Go ahead. What was this date?

A. This was on June 7th.

Q. All right, go ahead.

A. On June 8th we placed the same location, that is Agent Pair and myself, placed the same location under observation. At 11:55 AM we observed this same colored man, whom we identified to be Obie Durham, as he made his pick-up in the same general type. The automobile stopping in front of the location, some person approaching the car, something going into the automobile, and it appeared to be a small sack. The automobile this particular time was a 1946 or '47 or '48 model Plymouth.

Q. What model was it? Do you know?

A. Well, at that particular time I could not identify it as '46, '7, or '8. However, we later apprehended this

automobile and driver, and it proved to be a 1946 model Plymouth. My notes here showed it to be one of the three. It was a 1946.

Q. And what date was that on, Mr. Morris?

A. The date we saw this?

Q. This second occasion, yes?

A. The second date was June 8th. On this date, June 8th, we again followed this colored man who was driving the car and he drove to the same general location, Riverside and Ingleside Drive. He stopped in a colored residence section. Agent Pair and I abandoned him at that particular place, because we couldn't very well stop in this colored section without attracting attention. So we drove off and left him.

Q. Did you make any further investigation on that day? On June 8th?

A. Yes, sir. At 1:00 o'clock PM on June 8th, Agent Pair and myself staked out the Gray Highway, that is US 129.

Q. Where does that go to?

A. It goes north from Macon out towards Gray and on up through Eatonton. Up in that particular vicinity. We parked at a location right near the Jones County line and watched for Mr. Clay to pass by on that particular date. At 1:15 PM Mr. Clay came by driving his 1955 or this 1955 Oldsmobile and we followed him. We stayed with him for about 35 miles. We followed him to the vicinity of Eatonton, Georgia, but there, due to the high rate of speed that Mr. Clay was driving and due to traffic conditions, we were unable to stay up with him. He got away from us on that date.

Q. At what rate of speed was he driving?

A. I would say between 85 miles per hour and 100. I was driving a '54 Ford in pursuit of the car, attempting

to follow the car, and I was just plain unable to keep up with him. But he was driving between 85 and 100 miles an hour.

Q. Continue with your statement, sir.

A. On June 9th Agent Pair and I again maintained surveillance on that same Gray Highway, and watched it from 1:00 PM until 3:00 PM. We didn't see Mr. Clay. So we then drove back to Macon. Drove by the service station and as we did we saw the 1955 model Oldsmobile sitting at the gas pumps there being serviced, or there in the service station about to be serviced. At this particular time it was 3:30 PM. We immediately proceeded back to our Gray Highway position, about three miles south of Gray. Mr. Clay came by our position there at 4:50 PM. We fell in behind him and managed to stay with him this time. We followed him all the way to the outskirts of Athens, Georgia, a distance of some 93 miles. But there in the outskirts of Athens he managed to lose us again. This time due to traffic conditions, and on the way up Mr. Clay again drove at his very high rate of speed. Some of his speeds I would say were in excess of 100 miles an hour. When we got to Athens we began an investigation to attempt to ascertain where Mr. Clay might have gone in Athens, Georgia. We have previously checked out a telephone call and had ascertained that Mr. Clay had made a long distance telephone call from an address here in Macon. This address being 3644 West Napier Avenue, and by checking with the telephone company and ascertaining where this particular telephone was located in Athens, we then found that there was a house located at 140 Morton Avenue that had been purchased in the name of Clara Willis. We knew from prior investigations that Clara Willis was associated with Mr. Clay through Miss Mattie Bell Anderson. She being the mother of Mattie Bell Anderson. We made a further in-

quiry and found that this house was allegedly occupied by Mr. and Mrs. Anderson. About 9:00 o'clock that evening we went out to this location and we found that Mr. Clay's automobile was sitting in the driveway of this residence, 140 Morton Avenue in Athens and that Mr. Clay was sitting on the front porch.

Q. What date was that?

A. That's on June 9th. On June 14th, a week-end intervening there, Mr. Pair and I decided that it was going to be necessary to place three locations under surveillance. That it would be necessary for us to place the house at 3644 West Napier Avenue under surveillance, the house at 140 Morton Avenue in Athens under surveillance and also the service station where Mr. Clay had been observed by Agent Pair on previous dates. So with that in mind we secured the services of Agent Lewis. We asked Mr. Lewis to watch the location at 140 Morton Avenue in Athens. Agent Pair then took the location of the Shell service station on Napier Avenue and I took the location at 3644 West Napier Avenue. We placed these places under observation. Now on June 14th between the hours of 10:00 AM and 2:30 PM I placed this house at 3644 West Napier Avenue under surveillance and kept it under constant surveillance. This house was occupied by Mr. and Mrs. Alvin Cotton, Mary Cotton and Alvin Cotton. At 10:45 AM a person who looked very much like Mr. Clay entered the rear door. I was not in my position able to make a positive identification. But the person was dressed as Mr. Clay dresses, he was about the same size, same statue, everything about him resembled Mr. Clay. During this interim period, incidentally, that I was watching this house, there were at least six or seven automobiles parked in the yard, which I considered rather unusual for a house in a residential area. One of the cars in the yard was a '54 model Chev-

rolet that Mr. Clay had been seen driving. As I said, Mr. Clay entered the house at 10:45 AM, or some person that looked like Mr. Clay. I did not see Mr. Clay leave the house on that particular date.

Q. And why didn't you see him leave?

A. Well, it is possible that he went out another door that was not in my line of vision or he might have gotten out while I was momentarily distracted by watching some other person.

Q. What day was that?

A. That was June 14th. On June 15th I managed to get a little better place from which to watch this particular house which changed a view of the entire rear entrance and the entire back yard. Most of the traffic into and out of this house was apparently through the rear door. There was a great amount of traffic in and out of the back door, and consequently I selected this position on that account. Now on the following day which would be June 15th, being Wednesday—

Q. This is the day that you got the new position?

A. Yes, sir. I watched the house from 9:10 AM until 1:00 o'clock. At 10:34 AM, a colored woman came to the house and a person came to the door. That was Mr. Clay. Mr. Clay stood in the rear door and talked. At this time I had some powerful binorculars and was in position where I could clearly see him, and I am certain that it was Mr. Clay who talked with this colored person. He was already at the house when I arrived because he had not been seen to come in. Mr. Clay talked with this colored woman for some time there at the back door and she left. At 11:06 AM Mr. Clay left driving his 1955 Oldsmobile from the location. At 11:18 on the 15th Mr. Clay came back driving the Oldsmobile again. When he got out of the car this time Mr. Clay had a paper sack

in his left hand. A paper sack of the type and size usually used in lottery operations and he entered the cotton's house with this sack in his hand. Now he stayed in the house from 11:18 until 11:22, at which time he came back out. But when he came back out I was unable to determine whether or not he had the sack in his hand as he came back out.

Q. Why were you unable to determine that?

A. Well, I saw him only momentarily when he came out. He was turned partially away from me as he was walking and the sack was not extremely large. It could have been held in the hand on the side away from em. I couldn't see it as he came back, but I definitely saw him take a sack into the house. Mr. Clay got in the Oldsmobile and left. I continued to watch the place from about 1:00 PM on that day, but saw no further activity there at that time. Now, on June 16th as I was going to the place from which I was to observe the 3644 West Napier address I passed Mr. Clay on the road. He was standing beside his automobile, standing beside this old model Buick that he had been seen in before. It is a 1941 model Buick, license No. J 10196. He was standing in front of an old burned down building that I understand was once owned by Mr. Clay at 3760 Napier Avenue. When I saw Mr. Clay standing at this location beside the road, I immediately got into a position to keep an eye on Mr. Clay. I took up a position down a side street, keeping Mr. Clay in view. At 10:34 AM, no at 10:22 AM a colored male driving a 1946 or '47 model Buick convertible stopped. Mr. Clay went back to this old Buick model automobile and talked with the driver for some length of time. At 10:00—

Q. Now, how long had he been standing there?

A: Well, I had first seen—I don't know how long he was there before I saw him, but he was there at 10:08

and the colored male arrived at 10:22. The colored male left at 10:34 and headed away toward town. So when the colored male left I took out in pursuit of him to attempt to identify him., But he lost me in traffic, and I was unable to do so. So I then went on by the service station and I saw Mr. Clay's automobile. The Oldsmobile at the service station being serviced, and then proceeded from that point on to the observation place from which I could watch the 3644 West Napier address. I saw Mr. Clay arrive at that location at 11:04 AM. When he arrived he entered the rear door. I got a good look at him, and at 11:39, that is about 35 minutes later, he came back out of that door and walked away from the location, walking towards Mann's Drive-In, which is sort of catty-cornered across the street. I didn't see Mr. Clay again at that location on that date.

Q. That was the 16th?

A. That is the 16th, yes sir. Now, on the 17th, I began watching the—

Q. Just a minute. What kind of car did you say Mr. Clay was driving that day when you saw him?

A. Mr. Clay had been seen in the morning driving the old 19—

Q. Did you see him driving it?

A. No, sir, I didn't. I had seen him beside the old 1941—I didn't see him driving a car that day. He walked in and out of the Cotton residence on that date.

Q. Go ahead.

A. Now, on the 17th which was Friday, I again took up my position at 10:08 AM. On this date again there was—the 1954 Chevrolet automobile and several other automobiles were parked in the rear yard of this Cotton residence. I would say that all together there were six or seven cars at this location.

At 11:25 Mr. Clay arrived at the location and walked in through the rear door. At 12:03 he came back out of the Cotton residence, walking out of the rear door. I didn't see him arrive or leave in an automobile on that date. I saw him walk into the house, and saw him walk out. From the direction from which he came, it is possible that he parked his car over at Mann's Drive-In anod walked in from that direction. At 12:20 PM Mr. Clay came back to the Cotton residence. This time driving the 1955 Oldsmobile, and he stayed in the house from 12:20 to 12:44, at which time he left in that Oldsmobile automobile.

Q. Now, were you with Mr. Morris on the 21st—I mean with Mr. Pair on the 21st when the search warrant was executed?

A. Yes, sir, I was.

Q. Would you tell us what happened on that day after the warrant was secured?

A. After the warrant was secured and we had arrived in Athens, I was driving the automobile. I parked my car just a few doors up the street from Mr. Clay, in order that we could see Mr. Clay when he arrived at the location. We saw Mr. Clay arrive at that location at 2:40 PM, driving the black 1955 Oldsmobile. We gave him just enough time to drive in the driveway and then I drove the Ford in right behind him. Drove into the driveway.

As we arrived there Mr. Clay glanced back and saw us. He was getting out of the automobile. He had a brown paper sack in his hand. I believe it was his left hand. I was driving the automobile and was concerned with getting out of the car at that particular moment as he got out, but I do recall seeing him get out of the car with this brown paper sack in his hand. As soon as Mr. Clay saw us, he immediately broke for the door and

began to run. It was a matter of 25 feet or less from his position there beside the automobile and the front door. He broke and ran for the door, running up onto a little porch or stoop. Mr. Lewis, who was with us, Mr. Pair, and I all hollered for him to stop, told him we were federal officers, to stop. Mr. Lewis and Mr. Pair ran to the front door, and I was in hot pursuit. But they were a little bit faster than I was. When they arrived at the front door, Mr. Clay had gotten his hand on the screen door, but had not gotten it open.

At that time Mr. Pair again said to Mr. Clay: "Mr. Clay stop. We are federal officers. You are under arrest." There was a slight scuffle there at the door. I had the search warrant in my hand. And our plan had been for me to go into the house first. Of course, we had not anticipated any scuffle at the door.

The paper sack that Mr. Clay had in his hand broke open and part of it fell to the floor.

Mr. Gautier:

If Your Honor please, we would like to renew and make the same objections we made as to Mr. Pair's testimony, both as any content or what happened about the paper sack. And I might just go ahead and make it as to any search of the house on the same grounds that we have earlier made in our motion to you, and that were stated as to Mr. Pair's testimony.

By the Court:

All right, sir.

Mr. Gautier:

In order to save time.

By the Court:

Very well. I make the same ruling.

A. I heard Mr. Lewis say that "This is it", as he picked up part of the content from this paper bag that had fallen to the floor. I heard Mr. Pair tell Mr. Clay that he was under arrest. That was the second time I had heard him say this. I then handed the search warrant to Mr. Pair and said: "I'll take the rear door", and I left to go to the rear door. As I got to the rear door I could hear some controversy going on at the front. This was a sort of shotgun type house, I could see from the back door all the way through. And I saw Mr. Pair and Mr. Lewis had gained access to the house, through this hall way.

As I came through the rear door there was a colored maid in the kitchen. I told her I was a federal officer to come and lets go up in the livingroom, and she did very willingly go up to the livingroom where we had them all sit down. Mr. Pair then asked Mrs. Anderson, in my presence, if she lived there, this location. She said that she did. He asked Mr. Clay if he lived there, and he said that he did not. He asked her several other questions that I do not recall off hand, but Mr.—er, they did elicit the reply from Mr. Clay that he was just passing through and had just stopped in for a visit.

Mr. Pair then began to explain to Mrs. Anderson that he had a search warrant for a search of the premises and, as I said, we had seated the persons who were at the house in the livingroom, and Mr. Paid and I began to search the premises.

Q. Did you participate in the search of the premises?

A. I did participate. Mr. Pair and I began the search of the premises. Mr. Lewis remained there with the persons in the house.

Q. Well, without going in any further into the search of the house, just cut it short. Did you also participate in the search of the automobile that Mr. Clay came in?

A. Yes, sir, I did.

Q. What did you find in the automobile, sir?

A. I found a paper sack containing 948 pennies, and a tablet or envelope type—not envelope, a composition booktype thing. The item you have in your hand there. As might be used by a school child.

Q. I'll ask you if that is the pad that you found in the car?

A. That is the pad and this is my identification, where I wrote on the front. This item was found on the front seat of the 1955 Oldsmobile, seized June 21st, 2:30 PM at 140 Morton Avenue, Athens, Georgia, signed W. A. Morris, Special Agent.

Mr. Thompson:
Identify this, please, as the next number.

The Clerk:
Govt. Ex. No. 23.

Q. Did you also find a license tag in the automobile?

A. Yes, sir. There was a license tag. It was propped up inside the car so it could be seen, but it was not displayed on the rear of the car in the manner in which a license plate is usually displayed.

Q. You know what the number of that tag was?

A. I believe I have it my notes. (Examining notes) I do not have that number in these notes, sir.

Q. During the period of your investigation Mr. Morris, did you ever see any one other than Mr. Clay driving that Oldsmobile automobile?

A. No, sir, he is the only person I saw in the automobile.

Q. What other automobile, if any, did you see him drive?

A. I saw Mr. Clay driving a 1941 model Buick. The license number, as I recall it, was J-10196. I also saw Mr. Clay driving a '54 model, no, I beg your pardon. I am not certain. I cannot state positively that I saw Mr. Clay driving that '54 model automobile during the course of this investigation. I saw him drive it on a later date.

Q. You saw him driving the Buick and—

A. Yes, sir. This particular automobile was parked in the yard of the Cotton residence during the course of the investigation. But I can't state positively that I saw him drive it on any date.

Q. Following your search of the premises there and the automobile, what action did you and the other officers take?

A. Mr. Pair and I began to search the premises and we searched the premises from attic to basement. We searched first of all a bedroom, located on the front right hand side of the house. And in this bedroom there was a desk, on which there was two adding machines, or printing calculators, more suitably named: There were several other items on the desk, including some books and records that had notations in them that were identifiable as lottery. Found numerous small books on this desk and in this desk. We asked Mrs. Anderson, either Mr. Pair or myself, I don't recall which of us asked, to whom this desk belonged. She said that it did not belong to her. We asked Mr. Clay if it belonged to him. He said it did not.

On further questioning she said that this desk had been in the house when they moved in and that she assumed it belonged to the prior owners. Now, in this desk we found, among other books and records and so forth, a check book that had some blank signed checks bearing the signature of Clara A. Willis.

Q. That is the same as Govt. Ex. No. 20?

A. Yes, sir. This is the check book, blank signed checks in it. That was in the desk.

Q. What else did you find, if you'll run over it rather rapidly?

A. Well, we also found in the hall closet some ten cases, unopened cases, that contained these lottery books. We found an opened case of lottery books in that closet, that would, may be a case that was partially used. Found a large paper sack containing numerous coin wrappers and money wrappers, of various types and descriptions. We found some cloth money bags. On top of a bureau in the hall, we found a cardboard box containing rolls of adding machine tape. We found more cloth money sacks in a cabinet located in the breakfast room, I would say. I can't recall off hand having found anything other than that myself.

Q. I'll ask you to examine the exhibits that are here in these two carts Mr. Morris. If you will just step down here and examine them and tell us, if you can, whether or not these are the same items you found?

A. Yes, sir, these are the same cases of lottery books. They were unopened at that time. We have since opened these to ascertain what was contained in them. This is the partially used box. In this box is a brown paper sack which apparently has broken, busted since we found it. Contains the money wrappers, but these are the money wrappers that are contained in it, and the bag here would be marked for identification.

Q. That is Govt. Ex. No. 17 you are talking about?

A. Yes, sir. These are the cloth money sacks that were found, some of them in the hall closet and others found in the cabinet in the breakfast room. This is the adding machine tape that was found on the bureau or chest of drawers in the hall. I believe that takes care of all of it, Mr. Thompson.

Q. What further investigation did you make in this case, Mr. Morris?

A. The day after the raid, which would be June 22nd, I went to the address 3644 West Napier Avenue, and interviewed Mrs. Cotton and Mr. Cotton. I talked with them for some length about the automobile that had been seized, about the manner in which the car had been purchased, who purchased the car, and so forth. Mrs. Cotton told me at that date that it was her automobile, that it had been borrowed from her by Mr. Clay. She was a little vague about the monthly payments, not who made the monthly payments, but the amount and he date of the monthly payments. She didn't recall how much of a down payment she had made on the automobile. She gave a figure which on later investigation proved to be wrong, but I talked to her for some length concerning—

Mr. Gautier:

If Your Honor please, I think he ought to state what figure she gave rather than just making a conclusion that the figure she gave him was wrong.

By the Court:

Yes, that might be—

Mr. Morris:

If I may refer to my notes.

Mr. Thompson:

I would like to state for the record that this pad, lines tablet was identified as Govt. Ex. No. 23.

A. Mrs. Cotton told me that the automobile cost $4100.00.

Q. Wait just a moment, please. I am looking for Govt. Ex. No. 11 (Defense counsel had it) Go ahead sir, and what was the figure that she gave you?

A. She said that she paid $4100 for the car and that she paid $1700.10 down. She also told me that she had paid the car up to August, 1955, as of this date. This was on June 22nd.

Q. Now, Mr. Pair, did you ever go into the premises at, what was that—3644 Napier?

A. Yes, sir, I did on the day following the raid. That is the same date that I was out talking to Mr. Cotton, and I did on a later occasion go into the premises.

Q. On this same date. What was the arrangement of the house there?

A. Well, this house too was a sort of a shotgun house with a hall—

Q. What do you mean when you say shotgun type?

A. I mean you can walk to the front door and look through the house and see out the rear door. There are rooms on either side of the hallway.

Q. That is not any reflection on the kind of house?

A. No, sir. In my way of thinking that is the way of describing a house that has a hall running continuously through the house.

Q. Yes, sir.

A. There was a bedroom, perhaps two bedrooms and a kitchen on one side, two bedrooms and a kitchen on the left side, and a bedroom and—two bedrooms and a bath, two bedrooms and a bath on the right hand side of the house.

Mrs. Cotton said that she rented four of the rooms in the house direct from a Mrs. Kennedy, and she showed me the rooms that she lived in. She said that Mr. Clay occupied one room on the right hand rear bedroom right next to the bathroom on the other side of the house.

Mrs. Cotton showed me not only her part of the house, but showed me Mr. Clay's part as well. The room that Mr. Clay had had a padlock on the door. However, Mrs. Cotton had a key to that room and she opened it and showed me the room that Mr. Clay occupied as well.

Q. Tell us where the telephone was in that house.

A. The telephone was located in Mr. Clay's room, to which you had to open with a key. Open the padlock in order to get to the telephone.

Q. Mrs. Cotton had the key to that lock?

A. She did have the key to that room, yes, sir.

Q. Will you continue, sir. What was the next phase, if any, of your investigation of this case?

A. Well, after having talked with Mrs. Cotton on this date. I then proceeded to General Motors Acceptance Corporation and checked their records and proceeded to the Oldsmobile place. I don't recall the name of it, but the place from which the car had been purchased and checked the records there of the purchase of the automobile, obtained some copies of various documents in connection with the automobile seizure. We, of course, had seized this automobile and certain papers were necessary to submit with that.

Q. Counsel has objected to any reference to the civil case, Mr. Morris, so you will omit that.

A. Yes, sir.

Q. Did you make any further investigation in connection with the case after the 22nd, and your calling on these various businesses?

A. Yes, sir, I went to Bibb Manufacturing Company and—

Q. Might I interrupt a moment? Did you see Mr. Clay on the 22nd?

A. On the 22nd, yes I did see Mr. Clay. I do recall now that I saw Mr. Clay. He came to the Cotton resi-

dence while I was there. I don't have my notes with me of these particular things. I am having to rely on memory. Mr. Clay did come to the house while I was there, and there was some talk between Mrs. Cotton and Mr. Clay as to what was going to be done about her automobile. Mr. Clay didn't make any statement in my presence as to what would be done.

Q. Go ahead, sir.

A. On that same date, on the 22nd, I also checked the records of the Bibb Manufacturing Company as to the earnings, the prior earnings of Mr. Cotton, as an employee of Bibb Manufacturing Company, and ascertain what amount of money he had made during that time.

Q. Mr. Morris, incidentally, do you know of your own knowledge whether or not Mrs. Cotton was employed during this period of time?

A. Mrs. Cotton told me that she was not employed. She told me that she made some money selling, I believe she said she sold milk. She has a cow there, and she sold some milk and made some money in that manner. But she was not employed.

Q. Now, what was the next phase of your investigation from June 22nd, Mr. Morris?

A. The next phase was to check the long distance toll calls made from the Athens residence, 140 Morton Avenue. Mr. Pair and I then checked out those toll calls and ascertained—

Q. Mr. Pair was with you when you did this?

A. Yes, sir.

Q. I think he testified to that. Probably we might speed things along if I just asked you if you made any investigation on June 28, 1955?

A. Yes, sir. On June 28th it was necessary for us to get some personal information concerning Mrs. Cotton and Alvin Cotton. Information for our file as to their

age, extent of education, and items of that sort. On that date Mr. Pair and I called upon Mrs. Cotton, at her residence at 3644 West Napier Avenue, and talked with Mrs. Cotton. We obtained information from her as to her age, where she had gone to school, how much formal education and so forth that she had. At the conclusion of our interview, we were leaving in a government automobile, driving out of this premises. There is a driveway that entered this house from the front, cut through and came out a side street. We had driven up and parked in the driveway at the front of the house. As we left we drove through the rear yard out into the side street, and as we were leaving we met Mr. Clay who was walking toward the house from the direction of Mann's Drive-in. He had a brown paper sack of the type that ordinarily is used in lottery operations in his hand. As he saw us he began stuffing that sack into his right hand pants pocket. We spoke to him and drove on.

Q. Mr. Morris, I don't want to correct you on that, but I do want to see if I can refresh your memory a little. It was the 28th that Mr. Clay was arraigned, was it not?

A. Oh, I'm sorry, sir. I am incorrect about the date of that. The 28th we made another investigation. This particular incident we saw at the Cotton residence occurred in the early part of July. On June 28th, Mr. Pair and I were driving in a government automobile approaching Macon, Georgia—

Mr. Watkins:

If Your Honor please, we move to rule out that last statement by this witness. Unless we can tie it down to the time within the period alleged in the first count of this indictment. This incident alleged a conspiracy which, according to its terms, ended June 19, 1955, the

30th day, and he is testifying about something that happened in July of 1955. He is obviously mixed up on his date. We object to that part of his testimony which relates to any time in July of 1955, that he saw the defendant or any of them with anything, because that would be after the time alleged by the grand jury in the indictment and would be inadmissible for any purpose.

By the Court:

What do you say Mr. Thompson?

Mr. Thompson:

If the Court please, I don't want to argue whether or not it's admissible at all if the witness says that it happened after the date of the indictment. We are willing for the jury to be instructed not to consider it. I didn't know what date it happened when I asked the witness and found out.

By the Court:

Very well then, if you don't insist on it.

Q. I would like to ask the witness on what date that occurred, if you know?

A. To my best recollection it was in the early part of July.

Mr. Thompson:

If the Court please, we don't insist on it.

By the Court:

Very well, we will rule that out and we will just suspend now and the jury may retire at this time.

(October 18, 1956, 9:30 AM.)

By Mr. Thompson:

Q. Mr. Morris, when we recessed for the evening yesterday, I believe you were testifying with reference to Obie Durham. When, during this investigation, was the first time that you saw Obie Durham?

A. Well, I first saw Obie Durham on June 7th.

Q. And what were those circumstances?

A. Well, Agent Pair and I had the establishment out on the Emarf Highfay, near Macon Street, the colored restaurant under surveillance. On that date I saw Obie Durham driving a '39 Buick, license Number F-11833.

Q. That is the number you couldn't give us yesterday?

A. That's correct. I didn't have it in my notes yesterday.

Q. And what was that?

A. That was F-11833. This automobile operated by Obie Durham approached the colored restaurant, stopped momentarily in front of the restaurant, an unknown person came out and passed an object through the window that appeared to be a small paper sack.

Q. Where did this unknown person come from?

A. From the restaurant. This colored restaurant located on Emory Highway near Macon Street. Obie Durham then turned the automobile around and headed back toward town. Agent Pair and I followed him to the intersection of Rirevside Drive and Ingleside Drive. On the following day, June 8th, Agent Pair and I also had this place under surveillance. On this date at 11:15 AM. Obie Durham approached the establishment in a 1946 model Plymouth automobile, license number of the Plymouth is K-22662. We saw an identical set of the circumstances. Saw him hestitate momentarily before the establishment, saw a person pass an object into the

automobile, this object appearing to be a small paper sack. Obie Durham then proceeded back on Emory Highway toward Riverside Drive where he turned to the right. On this date Obie Durham stopped at the traffic light at the intersection of the Gray Highway and we pulled up beside his car and got a very good look at him for identification purposes. He proceeded out Riverside to Ingleside Drive and turned in a street there into a colored residential section. It was on this date that we abandoned our surveillance of Obie Durham, for fear that someone might be suspicious of two white men being in the colored section.

I next saw Obie Durham on June 28th at which time we arrested him. During the search of the automobile we found a small brown paper sack containing lottery tickets, concealed above the glove compartment, inside of the car up over the glove compartment.

Q. I will hand you Govt. Ex. No. 22 and ask you, if you can, to identify this as being the sack that you found that date?

A. Yes, sir. This is the sack that was found over the glove compartment, concealed inside the automobile.

Q. One other thing Mr. Morris, I believe that you have testified that at the time the automobile, the Oldsmobile, was searched, you found the license tag in it.

A. Yes, sir.

Q. At any time during your investigation did you see a license tag on the automobile?

A. Yes, sir. On the date that we followed Mr. Clay from the vicinity of Macon here to the outskirts of Athens, Georgia. At a traffic light in Eatonton, Georgia, I pulled up right behind Mr. Clay and could see into his automobile. The tag, as I had previously testified, was not affixed to the car, but it was inside of the car propped up in a manner so that it could be seen and at that time

I did get the tag number of that automobile. The tag number was F-46554.

Cross Examination.

By Mr. Gautier:

Q. Mr. Morris, whereabouts on Emory Highway did you say this Obie Durham, you first saw him. You said some sort of store?

A. It is a colored restaurant on the right hand side going out the Emory Highway and its near Macon Street.

Q. Near Macon Street?

A. Yes, sir. I don't have the street number of the establishment.

Q. That is a colored restaurant?

A. Yes, sir.

Q. And then you said you saw him go to a colored residence on Emory Highway. Is that right?

A. No, sir, the colored restaurant, the same establishment.

Q. Oh, that was the same place. I wasn't sure whether he went to a residence and a restaurant.

A. No, sir, he went to the same establishment on each of the two days.

Q. That was June 7th and 8th?

A. Yes, sir.

Q. And on June 28th you did not see him over there?

A. No, sir. We intercepted him while he was driving on that route. We intercepted him on Emory Highway there at Riverside, and followed him through the remaining part of his route and intercepted and arrested him. I don't recall the intersection.

Q. Somewhere about College Street?

A. Somewhere about College Street is where we made the arrest. He was driving on the same route, at the same time of the day.

Q. Now, I believe you said one of your main jobs was, at least during a portion of this investigation, was to conduct a surveillance?

A. That was one of my duties.

Q. Surveillance out there at a house on West Napier?

A. That's correct, sir.

Q. Now, there is a difference between West Napier and Napier Avenue?

A. Yes, sir, there is.

Q. And part of your investigation you made a surveillance on a place out on Napier Avenue. Is that right?

A. For one day.

Q. One day?

A. Yes, sir.

Q. How far are those two places? The place where Mrs. Cotton lives, or did live at that time, and the place out on Napier Avenue where, I believe you said, you were watching Mr. Clay standing by an old Buick one day?

A. How far?

Q. How far apart?

A. What is the difference between Mr. and Mrs. Cotton's residence and the place where we saw him?

Q. Yes.

A. Off hand I would say its a distance of some five or six blocks.

Q. Half a mile to a mile, would you say?

A. Well, I couldn't say affirmatively without having measured the distance. I would say it is a very short distance.

Q. Five or six city blocks?

A. I would say about that, yes, sir.

Q. Now, was it June 15—what was the first day you made surveillance out near the Cotton home?

A. June 14th, I believe.

Q. June 14th?

A. Yes, sir.

Q. You went out there about 10:00 o'clock in the morning?

A. That's correct.

Q. How did you—did you just stand around and watch the place or did you conceal yourself or what?

A. I concealed myself.

Q. How far away from the Cotton residence did you locate yourself on this day?

A. I was perhaps fifty—seventy-five yards from the rear door of the establishment, the house.

Q. And you stayed out there from about 10:00 in the morning until about 2:30?

A. Yes, sir.

Q. Did you see Mr. Cotton that day?

A. I do not recall having seen Mr. Cotton on that day, no sir.

Q. Did you see Mrs. Cotton?

A. I definitely saw Mrs. Cotton on that day.

Q. What was she doing when you saw her?

A. She was moving some cows around in the field out there.

Q. You saw her out there taking care of her cows?

A. Yes, sir.

Q. And I believe you said you saw Mr. Clay enter that house from the rear entrance. Is that right?

A. That's correct, sir.

Q. One time?

A. One time.

Q. Now, you have testified, I believe, about seeing some automobiles parked there on the 14th and maybe some other days?

A. Yes, sir.

Q. How many of the days that you made an investigation out there did you see these several automobiles?

A. Well, the number varied on different days. I would say that there were between four and seven automobiles there on each date. On some days there would be as many as siv or seven, on other days as small a number as three or four.

Q. You saw some old, sort of beaten up, automobiles there didn't you?

A. I do recall having seen one very old Studebaker.

Q. An old Studebaker. What else, see any kind of truck there?

A. I do not recall having seen a truck.

Q. What kind of automobiles did you see there on the 14th?

A. On the 14th, my notes do not show the type of automobiles. I recall having seen the '54 model Chevrolet that was used by Mr. Clay on later occasions.

Q. Did you actually count the automobiles that day?

A. On that date I estimated the number at six or seven.

Q. Well, you were right close by, you didn't count them?

A. I didn't find it necessary to count them, no.

Q. You didn't find that necessary in your surveillance to count them?

A. No, sir.

Q. And did you see any of the automobiles in use?

A. On that date I did not see any of the cars in use during the hours that I watched the residence.

Q. Now, all these automobiles you saw then were just parked up there and stayed there the whole time you were there. Is that right?

A. The entire time I was there, with the exception of the '54 Chevrolet, that did leave. I did not see who drove

the car away, and I did not see who drove the car back, but I did notice that car left. I didn't have a very good vantage point on the 14th from which to watch this residence.

Q. That is the only automobile that left there isn't it?

A. Yes, sir.

Q. The '54 Chevrolet?

A. It is the only automobile that I saw leave there. Let's put it that way.

Q. Well, you could see the rest of them couldn't you? You counted them.

A. I believe I could have seen the others if they had left. That is the only car that I did notice that had left and did come back.

Q. And some of those automobiles there were there from—You saw them there from 10:00 o'clock until 2:30, and you saw some travel by one automobile. That's a '54 Chevrolet?

A. That's correct.

Q. And the only person you saw there on that day was Mrs. Cotton out there taking care of her cows, and Mr. Clay?

A. She is the only person that I recognized at this time as having been one of the persons at the place on that date.

Q. Well, did you see anybody else?

A. Yes, sir. There were other people there. I have not determined who these other persons were, but I did see other people. Some children and a crippled gentleman were at the house on that date, but I don't know their names. Found it unnecessary to determine whom they were.

Q. You just saw a crippled man and some children?

A. And Mrs. Cotton and Mr. Clay.

Q. And you saw Mr. Clay once?

A. Yes, sir.

Q. Now, what was the next day you made a surveillance on this house out on West Napier?

A. The following day, the 15th.

Q. And you went there about 10:19. Is that the time, I believe you testified?

A. Yes, sir. My notes show I arrived at 10:19 and remained there until 1:00 o'clock.

Q. What automobiles did you see there that day?

A. There were five cars in the yard on this date, including the '54 Chevrolet that I've testified about previously, and the '55 Oldsmobile that I have also testified about.

Q. The other three cars, did you see in use at all that day other than the '54 Chevrolet or '55 Oldsmobile by anybody?

A. I cannot state positively whether any of the other cars were used on that date.

Q. You don't recall any?

A. I do not recall them having been used.

Q. Well, you were making a pretty accurate check and surveillance of that residence?

A. I was attempting to, Mr. Gautier.

Q. And making notes of it pretty shortly after this?

A. Yes, sir.

Q. All right. You have been investigating, I believe you testified, for a good long time?

A. Quite a while, yes sir.

Q. Now, I think—let me see—who did you see at the Cotton residence that day?

A. On that date?

Q. Yes, sir.

A. I saw a colored woman arrive. I saw her talk with Mr. Clay as Mr. Clay stood in the rear door of the house. I saw—

Q. See her talking to anybody else?

A. I didn't see her talking with anybody else.

Q. You were watching her weren't you?

A. Yes, sir.

Q. You had a better vantage point that day?

A. I did have a better place from which to watch on this day, yes sir. I saw Mr. Clay leave the house and come back on that date carrying the package that appeared to be lottery—

Q. Well, you don't know what it was do you?

A. No, sir. It was a sack similar to this.

Q. Paper sack, could have had a sandwich in it anything like that, couldn't it?

A. Well, from the manner in which—

Q. Just a grocery sack?

A. Well, from the manner in which it was being carried, I would say it was a sack of lottery—

Q. You mean—the manner in which it was being carried?

A. Yes, sir.

Q. What manner, Mr. Witness? Just testify what manner he did carry it in.

A. Somewhat in this style. Rolled up in his hand, very lightly in his left hand.

Q. Grocery sack rolled up in his hand. You saw him with that. That is all you saw?

A. That is what I saw, yes, sir.

Q. I believe you saw him get in the Oldsmobile that day sometime. Is that right?

A. That's correct.

Q. Did you see Mr. Cotton that day?

A. I don't recall having seen Mr. Cotton there on that date.

Q. See Mrs. Cotton?

A. I don't recall as to whether I saw Mrs. Cotton on that date or not.

Q. In other words all you recall seeing then is Mr. Clay and some negro woman that he talked to?

A. On that date, yes, sir.

Q. And all you saw them doing was standing up there talking?

A. Standing at the back door, yes, sir. Mr. Clay was standing in the doorway at the top of the steps. The colored woman was standing at the bottom of the steps talking with Mr. Clay.

Q. They were separated by the length of the steps?

A. Yes, sir, some three, four or five steps.

Q. Now, on the next time you made a surveillance out there on West Napier, I believe that was the date you made a surveillance out on Napier too, wasn't it?

A. Yes, sir, it was.

Q. That is the one at 3760 Napier, where the house or store or both, or whatever it is, burned down, You don't know what was there before, or do you?

A. Well, there was an establishment there and it was burned. I had seen the establishment before it burned.

Q. And it burned down, and Mr. Clay was out there in his automobile. Is that right?

A. Parked on the street in front of the old burned down building.

Q. And you saw him talking to some negro man. Is that right?

A. That's correct, sir.

Q. Now, then you went to West Napier, I believe?

A. That's correct.

Q. And how long did you stay at West Napier on the 16th?

A. I stayed at West Napier from sometime shortly after 10:39 until sometime after 11:15. I don't have the exact time that I arrived and the time that I departed.

Q. Stayed there about an hour and a half approximately?

A. I would say an hour and a half to two hours, yes, sir.

Q. Hour and a half to two hours. Did you see any automobile there that day?

A. My notes do not show that there were any.

Q. You just don't remember do you?

A. My best recollection is that there were several cars parked in the yard on that date also.

Q. Did you see any of the automobiles in use there that day?

A. No, sir. I did not see any automobiles in use on that date, at that establishment.

Q. In the hour and a half or two hours that you stayed there?

A. Mr. Clay came to the place but he apparently, very apparently, came there walking.

Q. Well, I asked you what you saw, not what was apparent?

A. I didn't see any cars in use on that day.

Q. You saw him walking there. is that right?

A. Yes, sir, I did.

Q. You see Mrs. Cotton on that day? That is the 16th now.

A. I do not recall whether I saw Mrs. Cotton on that date or not..

Q. You don't know whether she was out taking care of the cows that day or not?

A. No, sir, I do not know.

Q. How about Mr. Cotton? You see him?

A. I do not recall whether I saw Mr. Cotton on that date or not.

Q. Did you see anybody with Mr. Clay that day, at the place on West Napier?

A. No, sir, I did not. I saw Mr. Clay, but not with any person.

Q. Just saw him come in and go back out?

A. Yes, sir.

Q. Walking?

A. Yes, sir.

Q. All right. And when is the next time that you made a surveillance out on West Napier?

A. Following day, on the 17th.

Q. And how long did you stay out there, between what hours?

A. Well, my notes show that I was there before 12:03, and—

Q. You don't remember what time you were out there?

A. I would say that I was there between the hours of 11:00 o'clock and 1:00 o'clock, approximately two hours.

Q. Maybe I got your testimony down wrong, but I thought on direct you said you went there at 10:08 AM.

A. That's correct. I did go there at 10:08 AM, its reflected by my notes.

Q. And you stayed there until what time?

A. Stayed there until after 12:44.

Q. After 12:44?

A. Yes, sir. I would say until approximately 1:00 o'clock.

Q. About three hours, almost three hours?

A. Yes, sir.

Q. And did you see any automobiles that day?

A. Yes, sir. The '54 model Chevrolet and several other automobiles were parked in the yard, three or four other cars.

Q. Well, did you see any automobiles in use that day by anybody besides the '54 Chevrolet or the Oldsmobile?

A. No, I didn't see any other cars other than those in use on that day.

Q. Any of those other cars, nobody was using them anyhow, whether they would run or not. Is that right?

A. I didn't see any of them in use on that day.

Q. Did you ever get up, or make any note of the make, at any time of those other automobiles besides this '54 Chevrolet and the Oldsmobile?

A. I believe that I did, sir.

Q. You got them?

A. I believe if I look through my file I might find it.

(Witness left the stand.)

In addition to the '54 model Chevrolet, which was a Bel-Air hard top automobile—

Q. Yes, sir.

A. License No. EX 60571, and the '55 model Oldsmobile, that I have already testified about and given the tag number on—

Q. We are familiar with that one.

A. Yes, sir, I think we are familiar with that one. I also saw an old model Plymouth, and old model DeSoto—

Q. A what model?

A. A 1937 model DeSoto. License number on that automobile was K-30957. This automobile was seen on several occasions in the rear yard. I saw a 1940 model Studebaker.

Q. A 1940 Studebaker?

A. Yes, sir.

Q. All right.

A. On which the tag number was A-4152. Let me refer to my notes just one moment, please, sir. I saw the Buick automobile used by Mr. Clay.

Q. That is that old Buick?

A. The old 1941 Buick, license J-10196.

Q. When did you see that there, you remember?

A. I saw that on June 17th.

Q. June 17th?

A. Yes, sir.

Q. You didn't see anybody use it?

A. Yes, sir. I saw Mr. Clay use it as he left the establishment at 12:03 AM.

Q. I thought you said he walked?

A. I don't believe that I said he walked on that date. If I did I was mistaken.

Q. I thought at 11:35 he walked out and he came back at 12:20 in the Oldsmobile. That was direct.

A. He arrived at 11:25 that day and walked into the rear door and he left at twelve something in the 1941 Buick. He returned at 12:20 in the Oldsmobile.

Q. All right, sir, that is the Buick.

A. I believe that is all of them, sir.

Q. That is all that you recall, at any time? That is the Chevrolet, the Oldsmobile, the 1937 DeSoto and the nineteen something Studebaker?

A. Yes, sir.

Q. Now, you testified, I believe, that you went there and had an interview with Mrs. Cotton. You recall the date of your first interview with her?

A. Yes, sir. It was the day following the raid in Athens, Georgia. Would be June 22nd, I believe.

Q. June 22nd?

A. Yes, sir.

Q. And did you identify yourself when you went to her house on that occasion?

A. I certainly did.

Q. Now, who was with you when you went there on the 22nd?

A. Special Agent Barno was with me on that day.

Q. Barno?

A. Yes, sir, local agent.

Q. When you arrived at the Cotton home, who was there?

A. Mr. and Mrs. Cotton were there. There were several children there, and an elderly crippled gentleman whose name I do not recall, but I believe it was Arnett. I am not certain of that.

Q. A rather old man?

A. Yes, sir. He was an elderly gentleman.

Q. I believe you said you identified yourself to the Cottons?

A. Yes, sir.

Q. Did you tell them that you were making an investigation concerning the Cottons?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. You are sure of that?

A. It is customary for us to do that, and I am certain that I did tell them the purpose of my visit.

Q. Did you make any notes of what you did?

A. Yes, sir. I made notes. I have some written notes of my conference with them.

Q. Well, you have been referring to them. How about referring to those notes.

(Witness left the stand to get his notes.)

Q. Are those your notes you have there?

A. Yes, sir.

Q. That some written statement you made up?

A. That written statement was made up at the Cotton residence on a portable typewriter while I was talking to Mrs. Cotton.

Q. Do you mind us looking at those notes?

A. This is a copy of it. I have the original here if the U. S. Attorney has no objection.

Mr. Thompson:

I have no objection. I have not seen those, but I have no objection. May I see your copy for a moment?

(Witness resumed the stand after handing Mr. Gautier the original and Mr. Thompson the copy.)

Q. Mr. Morris, did you advise Mrs. Cotton that you were making a criminal investigation about her and anything she told you could have been used against her?

A. I did, sir.

Q. You are sure of that?

A. I am positive of that, sir.

Q. You took a written statement from her didn't you?

A. She signed a written statement, yes, sir.

Q. Surely didn't put anything in that statement about that, did you?

A. It may not be in the statement. However, I did advise her, Mrs. Cotton, that she was not required to answer any questions and anything she said could be used against her.

Q. Isn't it customary, when you take a statement from somebody who is a prospective defendant, to include that in the statement?

A. I believe if you will refer to the last paragraph you will see that she made the statement of her own free will, and that nobody had forced her to say these things, and she said them because they were true. It was my effort in typing this statement to reduce this to her own words because I wished this to be her statement, not mine.

Q. Didn't say anything in that statement about using anything in there against her though, did you?

A. There is nothing in this typewritten statement that says it may be used against her.

Q. Now, Mr. Morris, you don't know whether you advised her of that or not?

A. Yes, sir. I do know because I have been an investigator for quite a while and I have been on this witness stand before, Mr. Gautier.

Q. And you have been an investigator for quite awhile and if you made such a statement you usually put it in the written statement too, don't you Mr. Morris? Isn't that true?

A. I would say that it is usually put in the written statement, yes, sir.

Q. You usually put it in there?

A. Yes, sir, I usually do.

Q. You advised her that she had a right to have counsel before she answered these questions?

A. I will not state that I advised her that she could have counsel. I told her she did not have to answer any questions.

Q. You didn't tell her anything about counsel or having a right to counsel?

A. No, sir, I don't recall having done so.

Q. Did you take any statement from Mr. Cotton on that day?

A. I took no separate statement from Mr. Cotton.

Q. Took a separate—

A. I said I took no separate statement. Mr. Cotton was present when this statement was taken. I am not certain whether he signed it as a witness or whether he signed it as a deponent or exactly how he signed it, or if he signed it at all, but he was present and I took no additional statement.

Q. You advise him that he was being investigated by Government—

Mr. Thompson:

If the Court please, I have not made any objection heretofore because I don't want to attempt in any way to limit the examination. However, we have not introduced any written statement in evidence, we haven't tendered one in evidence by Mrs. Cotton or Mr. Cotton and I don't see any relevancy of the cross examination to the point at issue here.

Mr. Gautier:

Yes, Your Honor, but he was sitting up there holding some—quoting some statement she'd made on direct examination. I think we have a right to go in and find out under what circumstances this statement was made. That is what I am trying to find out.

By the Court:

Although it is not tendered in evidence.

Mr. Gautier:

Well, the oral statement is in evidence. It is all right in there, if Your Honor please, on direct examination.

By the Court:

All right, go ahead.

Q. You didn't advise Mr. Cotton anything about it, did you Mr. Morris?

A. I talked to Mr. Cotton, to Mrs. Cotton and to the other gentleman present there, who was not a party in any manner, collectively. They were all together. I didn't feel it necessary to turn to each one of them individually and repeat myself. I identified myself and I advised them that anything that they said could be used against them, and it was not necessary—they were not required in any manner to make any statement.

Q. I believe that on direct examination you stated that Mrs. Cotton was rather vague about what she paid for the automobile, and how she paid for it. I believe that was your statement, wasn't it?

A. Yes, sir, that was my statement.

Q. Now what did she say that they paid, or she paid for the 1955 Oldsmobile?

A. She said she paid $4100 for the car.

Q. How much did she say that she paid down on that automobile?

A. She said she paid $1700.10 down on the automobile. If I may be allowed to explain my previous statement about her vagueness. These figures were the final figures. We discussed at some length how much she paid for the car and she could not remember exactly how much. She did not remember this and did not remember that, but finally arrived at these figures as the figures that she paid for the car and the amount of down payment.

Q. You mean while you were out there on the interview she arrived at those figures and gave you the figures she paid for the car?

A. Yes, sir. Finally these are the figures that she gave me, yes, sir.

Q. And that is $1700.10 was the down payment she told you?

A. That was the final figure she gave me as the down payment.

Q. And $79.93 a month?

A. Yes, sir.

Q. I believe you went down to Yates Motor Company to check this, is that right?

A. Yes, sir, that's correct.

Q. I believe she was in error about that, that there was $1700.75 instead of $1700.10. Is that right?

A. That's correct.

Q. That was her error?

A. Yes, sir.

Q. Now, the monthly payments are, according to the records that you examined down there and the District Attorney has already identified, $79.93 a month?

A. Yes, sir, that's correct.

Q. And the selling price of the automobile was actually $3607.75?

A. That's right.

Q. With the finance charges and so forth, it ran to $4098.65?

A. That's right.

Q. One more question. I believe you testified you made a second visit out there to see Mrs. Cotton and get some information?

A. Yes, sir.

Q. Who was with you on that occasion?

A. Special Agent Pair.

Q. Mr. Pair was with you?

A. Yes, sir.

Q. That is all.

(Witness excused.)

MRS. N. F. PATTERSON, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. You are Mrs. N. F. Patterson?

A. Right.

Q. Mrs. Patterson, where do you reside?

A. One twenty College Street.

Q. How long have you resided there?

A. Oh, since 1940.

Q. Some sixteen years?

A. Somewhere.

Q. Have you lived in Macon long?

A. Yes, sir. I have lived in Macon for about forty years.

Q. Mrs. Patterson, do you know Will Parks Clay?

A. Yes, sir, I've seen him across the street.

Q. You don't know him personally?

A. No, sir.

Q. You know him when you see him?

A. Yes, sir.

Q. You state that you have seen him across the street. Just what do you mean by that, Mrs. Patterson?

A. Well, I have seen him get in and out of automobiles and go in the house across the street, at 126 College Street.

Q. When did this occur?

A. Oh, I think it was the latter part of 1954.

Q. Latter part of 1954?

A. Fifty-four or Fifty-five, first part of '55.

Q. Did you see him do this on just one occasion?

A. No, he did it every day except Sundays, twice a day.

Q. Just describe to us what you observed, Mrs. Patterson.

A. Well, he would park his automobile down the street. He didn't ever park in front of 126 College Street. He would park his car in front of my house or down the street, on Riverside Drive or up on College Street, this side of Bond Street, and he would walk—

Q. He would do this every day?

A. Yes, he did it—well, I won't say every day, because I honestly didn't see him every day, but every day that I was out I saw him.

Q. How did your particular attention happen to be called to it?

A. Because I worked in the yard with my flowers and I saw him going in and out over there.

Q. What kind of automobiles would Mr. Clay drive at that time?

A. I don't know the make of the automobile.

Q. Were these new cars or old cars?

A. Well, it was a—looked like an old model car.

Q. Did he come and go in more than one car?

A. Yes, he did.

Q. Just what did you see in that respect, mam?

A. What do you mean in what respect?

Q. In the use of the automobiles.

A. Oh, he would sometimes park this automobile and he would get in another car and leave the house.

Q. Would he do that at the same time that he parked?

A. Well, he would stay in the house a while and then come out and get in the other car. He didn't get directly in the car.

Q. Where did he park these cars again when he came?

A. The cars that he would get in would be parked in front of the house or around 126, but the car that he would come there in—or get out of—well, anyway the car that he—

Q. Wait—

A. Wait a minute—

Q. One he arrived in?

A. One he arrived in he would park it not around 126 College.

Q. You ever see him come there in a car, and at the time he came there was a parking place in front of the house?

A. Oh, yes, there was always parking places in front of the house, even had a driveway and he could have driven in the back if he wanted to.

Q. But he never parked in front?

A. I didn't ever see him park there.

Q. Now, Mrs. Patterson, on these occasions when Mr. Clay would come to that house, you didn't see him every day because you weren't out in the yard every day were you?

A. No, I wasn't out in the yard every day.

Q. On these occasions when Mr. Clay would come to the house, did you observe any activity in the house while he was there?

A. Well, I didn't ever go into the house.

Q. Well, I mean from your vantage point across the street?

A. You mean people going in and out?

Q. Did you observe any, mam?

A. Well, I saw people going in and out of the house.

Q. And who were these people?

A. I don't know who they were.

Q. Were they white or colored?

A. Some white and some colored.

Q. And did you ever have occasion to observe any of them carrying packages with them?

A. Oh, yes, I saw them carrying packages.

Q. What kind of packages?

A. Paper sacks.

Q. How were they carrying those?

A. In their hands.

Q. Large or small sacks?

A. Small.

Q. Would the white people have small sacks?

A. Yes.

Q. And the colored people have small sacks?

A. Yes.

Q. Did you ever just sit and watch all day or anything like that?

A. Oh, no, I didn't ever sit and watch all day. No, I had too many other things to do.

Q. These were just observations that you made while you were out in the yard or—

A. Yes, I work in the yard quite a bit.

Q. I'll ask you when Mr. Clay came over there, did he ever bring anything with him?

A. Well, I have seen Mr. Clay carrying things in, sacks. On one occasion I saw him, when I was out in the yard, he parked his car almost to Bond Street and I can see up—you know when a car is parked at Bond Street—

Q. What street is that?

A. Almost to Bond, B o n d, Street

Q. And how far is that from the house?

A. Oh, about a block. I was out in the yard and I was—I looked up and I saw him coming down the street, and it looked like he had a money bag in his hand.

Q. Describe the bag to us, please.

A. Well, it looked just like a money bag that you would get from any bank, which I carried once myself for I don't know how long from the grocery store on the corner to my house.

Q. What color is that?

A. It looked like black and white.

Q. On other occasions, Mr. Patterson, did you see him carry paper bags in the house?

A. Yes, I have on a number of occasions.

Q. And what were the sizes of those paper bags? Big as grocery bags or smaller or middle size, or what size?

A. Well, I couldn't tell you exactly what size they were. They would just carry them in their hand.

Q. Just a small bag?

A. Yes, sir, just carry them in their hand.

Q. Now, you stated, I believe, Mr. Clay would sometime park around on Riverside?

A. Yes.

Q. How far is 126 College Street—that is in Macon, Georgia, isn't it?

A. Yes.

Q. How far is that from Riverside?

A. Riverside Drive?

Q. Yes, mam.

A. From where we live?

Q. Well, from where you saw Mr. Clay?

A. Four houses.

Q. One twenty-six is four houses up?

A. Yes, sir. One, let me see, one, two, three, four—I think it is the fifth house.

Q. Is the fifth house?

A. I think it is the fifth house.

Q. And he would park around on Riverside and walk way up there?

A. Yes, he certainly did.

Q. Is Riverside further from your house than Bond Street?

A. No, Bond is further than Riverside.

Q. Now, during the time these events were going on, you know who lived across the street there?

A. Well, the people who lived across the street have a panel truck and they had Cravey written on it, and I received mail in my box, Cravey, 125 College Street. I asked the Postman—I told the Postman that no one lived there by that name, and he said it belonged across the street to the Craveys.

Q. Do you know how many families lived across the street?

A. No, I don't know how many lived over there.

Q. Well, now do you know when these people moved across the street? Had they been living there all the time?

A. No, they hadn't been living there. A woman lived there that said she was Mrs. Clay. I don't know. She moved out and these people moved in.

Q. You don't know how many families were living there?

A. No, I don't know.

Q. That is a two story house?

A. Yes.

(No cross examination, witness excused.)

MRS. ELIZABETH R. FINCHER, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Will you state your full name and address, Mrs. Fincher?

A. Mrs. Elizabeth R. Fincher, 1300 McLendon Avenue, Atlanta.

Q. What is your occupation?

A. I am chief of the return service section for the District Director of Internal Revenue, District Director of Georgia.

Q. That is the Federal Collector of Internal Revenue?

A. That's correct.

Q. Will you state whether or not in that position you have in your custody and under your control, returns

that are filed pursuant to the Wagering Occupational Tax Act and the Wagering Excise Tax Act?

A. Yes, I have control of them.

Q. Are those records under your control?

A. Yes, they are.

Q. Do you know Mr. Fleming DuBignon?

A. Yes, I do.

Q. I will ask you whether or not he has ever had occasion to come in and check your records there?

A. I understand that he has been in at times.

Q. You don't know of your own knowledge that he has checked—

A. I don't know if he has checked these particular ones or not, but he has been in on a number of occasions.

Q. I will ask you, Mrs. Fincher, if you checked those record in response to the request to you yesterday?

A. I have.

Q. As a result of checking those records, will you tell me whether or not you found a registration or a purchase of an occupational wagering stamp by or on behalf of one Will Parks Clay for the period from July 1, 1954 to June 30, 1955? Regardless of when it was purchased, did it cover that period, if one was purchased?

A. I checked all records from July 1, 1954, through June 30, 1955, and we have no record.

Q. You have no record of what?

A. Of a form 11-C.

Q. And what is that?

A. A wagering—

Q. A wagering tax registration or stamp for Will Parks Clay?

A. That's right, or excise return either.

Q. Or an excise tax return for that time.

A. Yes.

Q. Did you find an excise return or a registration for anyone under the name of Will Parks Anderson?

A. I did not.

Q. Did you find from your search a registration or payment of stamp tax or excise tax under the name of Mattie Bell Anderson?

A. I did not.

Q. Did you find such registration or stamp tax or excise tax under the name of Obie Durham?

A. I did not.

Q. Did you find one under the name of Mrs. Mary C. Cotton?

A. I did not.

Q. Did you find one under the name of Alvin Q. Cotton?

A. I did not.

Q. Did you find one under the name of Clara Willis Cravey?

A. I did not.

Q. Did you find one under the name of L. B. Arnett?

A. No.

Q. Now, Mrs. Fincher, with reference to all of the names that I called to you, you checked your records covering the fiscal year, or the taxable year, beginning July 1, 1954—let me see the indictment, please, sir, July 1, 1954 and ending June 30, 1955. Are those the records that you checked?

A. Yes, it is.

Q. Now, where are those records maintained, Mrs. Fincher?

A. They are maintained in my section. We have cross reference cards, Form tens and also the 930's and 11-C's. We have all years.

Q. In what city are they maintained?

A. In Atlanta, Georgia.

Q. And that is in the office of the Director of Internal Revenue?

A. That's right.

Q. For the District of Georgia?

A. That's right.

(No cross examination, witness excused.)

MR. RICHARD EDWARD LEWIS, being called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Thompson:

Q. Will you state your full name and address?

A. Richard Edward Lewis, Macon, Georgia.

Q. What is your present occupation?

A. Special Agent of the Intelligence Division of the Internal Revenue Service.

Q. And how long have you been employed in that capacity?

A. Since February, 1949.

Q. Mr. Lewis, where are you presently stationed?

A. Macon, Georgia.

Q. What is your present assignment?

A. Investigation of alleged violations of Internal Revenue Laws, with the exception of liquor and tobacco.

Q. With the exception of liquor and tobacco. You don't work on that kind of tax?

A. No, sir.

Q. What taxes does your employment cover?

A. Income, wagering, excise, inheritance and things like that.

Q. What phase of that type tax do you investigate? Any particular phase, just civil matters?

A. No, sir. Alleged violations involving an attempt to evade or wilful failure to comply with the law, sir.

Q. In the course of your employment will you state whether or not you have been assigned to investigate a case involving Will Parks Clay?

A. Yes, sir, I have.

Q. And when did you receive that assignment, Mr. Lewis?

A. On June 14, 1955.

Q. Will you tell us, Mr. Lewis, what innvestigation you conducted pursuant to your official assignment?

A. Yes, sir. On June 15, 1955, I took up a position to watch the premises at 140 Morton Avenue at Athens, Georgia. At 2:41 PM I witnesses Mr. Clay arrive on Morton Avenue in a 1955 Oldsmobile ninety-eight, black in color. About 2:41 PM he drove into the driveway of the premises at 140 Morton Avenue. He got out of the left front of the vehicle, walked around the back of the car, opened the right rear door and removed a carton approximately one cube in size, a book—

Q. How big? A carton you say?

A. Yes, sir, approximately one foot cubed.

Q. What did he do with that?

A. He gave that to a small boy who had greeted him when he drove up.

Q. Did you see him or hear him greet him?

A. Yes, sir. He called him daddy. He gave a small book to another boy who greeted him, and he took from the rear of the vehicle a wicker basket, approximately 18 inches by 9 inches by 6 inches, and walked into the house at 140 Morton Avenue.

Q. How long did you maintain your surveillance on that particular day?

A. I was there approximately two hours.
Q. Until what time?
A. Until 3:00 o'clock, sir.
Q. Three o'clock?
A. Yes, sir.
Q. Was the automobile still there when you left?
A. Yes, sir, it was.
Q. What kind of automobile was that?
A. A 1955 Oldsmobile, ninety-eight.
Q. Were there any other automobiles at the house?
A. Not that I could see, sir.
Q. Would you continue, sir. Did you continue your investigation on the following day?
A. Yes, sir. On June 16, 1955, I again took up a position to watch the premises at 140 Morton Avenue. At approximately 2:28 PM I witnessed Mr. Clay arrive in the same vehicle, drive into the premises and again leave the car by the left front door. He walked around the back of the car, opened the right rear door and removed a newspaper and a brown paper bag, about ten or twelve pound size, which he carried in his left hand into the house. The bag was folded at the top and carried in his hand.
Q. About what size is a bag of that weight?
A. It is approximately 6 to 8 inches wide and—
Q. How about Ex. No.—this bag Ex. No. 22, was it larger or smaller than that?
A. Larger than that, sir.
Q. Larger than this bag?
A. Yes, sir.
Q. And what did he do after he got out of the car with the bag?
A. He walked into the house at 140 Morton Avenue.
Q. Did he knock on the door before he went in?
A. I did not see him knock on the door.

Q. Were there any other automobiles at that residence that day?

A. Not in my line of sight, sir.

Q. Did you see any automobile coming or going while you were there?

A. No, sir.

Q. And what was Mr. Clay driving that day?

A. A 1955 black Oldsmobile, ninety-eight.

Q. What happened to the car after he got there, if anything?

A. It remained in the driveway until I ceased my surveillance, at a few minutes past 3:00 o'clock.

Q. Did you continue your investigation the following day?

A. Yes, sir. On June 17th at approximately 2:44 PM I again witnessed Mr. Clay arrive at the same location in the black 1955 Oldsmobile, ninety-eight. And again I saw him remove from the right rear door, open the right rear door, and remove from the car a newspaper which he gave to a small girl who had greeted him with the word "daddy". He then took a brown paper bag, a little smaller than the one I described previously and a little larger than the one which you exhibited to me—

Q. Govt. Ex. No. 22, a little larger than that?

A. Yes, sir, and he took that bag and sheets of white paper, which I could not specifically identify, into the house at 140 Morton Avenue.

Q. Now, on these occasions—now I am going to hand you Govt. Ex. No. 22, and on these occasions that you saw Mr. Clay with this brown paper bag, how was he carrying it?

A. In this manner, sir, folded at the top and in his hand.

Q. Would you tell us what the next step of the investigation was, Mr. Lewis?

A. On June 21, 1955, after testifying before the United States Commissioner and on taking a search warrant, Special Agents Pair and Morris and I went to Athens to the vicinity of 140 Morton Avenue. And at about 2:40 PM we witnessed Mr. Clay drive into the driveway at 140 Morton Avenue in a 1955 black Oldsmobile, ninety-eight. We pulled into the driveway immediately behind him, and as we stopped he was leaving the car, the Oldsmobile. Mr. Morris was driving, I was sitting on the front seat with Mr. Morris. Mr. Pair was in the back. Mr. Morris and Mr. Pair left our car on the left side, I left on the right. I saw Mr. Clay turn in our direction and then immediately start running toward the house. We all started running after him.

I saw him carrying a brown paper bag.

Q. What size was the bag, sir?

A. Approximately a ten inch, somewhat, ten pound sack, somewhat larger than this one. I heard Mr. Pair call for Mr. Clay to stop. He told him we were federal officers.

I started running and at the time Mr. Clay got to the front porch, Mr. Pair and I caught him. I had him by his left arm and I think Mr. Pair by the right arm. The bag which he was carrying, at that time he had it in both hands and it split, and one of the smaller bags fell from it. I picked it up. It was not tied in any—

Mr. Gautier:

Now, we want to renew the same objection we made to testimony as to the contents of this bag and search of that house, and I presume they'll go on into it, on the same grounds we have heretofore made, to Mr. Pair's testimony and Mr. Morris's testimony, I believe.

By the Court:

Very well, and I make the same ruling.

A. I reached over and picked the bag up from the floor, opened it and saw that it contained lottery tickets. I told Mr. Pair that was—I said "This is it".

Q. I hand you Govt. Ex. No. 14 and ask you if you can identify this as being, or the contents of it as being the same that you saw on that day?

A. Sir, this is the bag that Mr. Clay was carrying that day.

Q. That is a portion of the contents of that larger government envelope?

A. Yes, sir. These smaller packages were inside of the bag, the larger bag. At the time the bag split, this smaller unwrapped bag fell to the floor. I was able to look into it and determine the contents of it.

Q. Mr. Lewis, what happened following this affair on the front porch?

A. Well, I then took the larger bag from Mr. Clay and told him that he was under arrest.

Q. Go ahead and tell us what happened following that.

A. We asked him if he lived at 140 Morton Avenue. He said that he did not. I then noticed Mrs. Mattie Bell Anderson and her daughter had come to the front door and were standing behind the screen. At this time Mr. Pair had obtained the search warrant and he stepped up to the door, identified himself, and advised Mrs. Anderson that he had a warrant to search the premises. She wanted to know whose name it was, and he told her that it was for the premises. She didn't want to let him in. Mr. Clay told her that she shouldn't let us in. Mr. Pair then pulled the door open. It was latched, but it came open easily. We took Mr. Clay into the living room and Mrs. Anderson and the child were there, and a few moments later Mr. Morris came through the back of the house with a colored maid, named Lucille Howland. Mr. Pair and Mr. Morris started the search of the house.

I stayed in the living room with the colored maid, Mrs. Anderson and Mr. Clay and the daughter. A few minutes later, one of Mrs. Anderson's sons came to the door. I asked him to come in, which he did, and sat down in the living room with us. A few minutes after that Mrs. Anderson complained of not feeling well. She had just returned from the hospital.

Q. Did you know that she had just returned from the hospital before you went there?

A. I had heard that, sir. We asked her for the name of her doctor, which she did not give us. We asked her if she wanted to call the doctor. She said no. I don't recall whether we asked her or whether she just stated that she wanted to lie down. But we permitted her to go into a bedroom and lie down, and she took the daughter with her.

Q. Did you participate in the actual search of the house?

A. Not at that time, no sir.

Q. Did you see what property was seized there at the house?

A. Yes, sir. I witnessed an inventory which Mr. Pair made.

Q. I will ask you Mr. Lewis, to step down here and examine these government exhibits which are in these two mail carts. I won't attempt to identify all of them, and tell us—this is Govt. Ex. 10, 19, 18, 17, and tell us which, if any, of those were seized at that time, Govt. Ex. 16 also.

A. Just this in the cart?

Q. Yes, sir.

A. All of this was taken from the premises at 140 Morton Avenue, sir.

Q. Have a seat. Mr. Morris—Mr. Lewis, what occurred following the search of the house as you have described?

A. Mr. Pair returned to the living room and I witness him search Mr. Clay. He searched Mr. Clay in my presence and took from him $278.30 in currency and coins, and check totaling approximately $319.00. Then Mr. Morris and I got the keys to the Oldsmobile from Mr. Pair and we took Mr. Clay to the Oldsmobile and searched the automobile.

Q. And what did you find in the automobile, sir?

A. We found a paper bag containing 948 pennies, one Write-Right tablet—

Q. I'll ask you, Mr. Lewis, if this Govt. Ex. No. 23, if you will examine that and see if you can identify it?

Mr. Gautier:

Your Honor, our objection would go to that too. That was taken from the car and that was included in the motion made to the Court prior to the trial.

By the Court:

Yes, and I make the same ruling.

A. Govt. Ex. No. 23 is the tablet which Mr. Morris and I took from the car.

Q. Can you tell us what happened after you had searched the automobile?

A. Yes, sir. We took Mr. Clay back into the house and loaded all of the material into the government vehicle which we had, and after giving Mr. Clay several opportunities to contact his lawyer, we took him to the United States Commissioner's office in Athens for a preliminary hearing.

Q. Now, you said you took Mr. Clay back out to the car. Where was the car at that time?

A. Parked in the driveway at 140 Morton Avenue, where he had left it.

Q. And how far was that from the house?

A. Approximately ten yards, sir.

Q. Now, with reference to this Govt. Ex. No. 23, the white pad, on examining it I find that the only things in it are some figures on the first sheet in there. Can you tell us what that is?

A. Yes, sir.

Q. What is that, sir?

A. There are three columns of numbers. Two complete columns and one partial column, containing numbers and the amounts bet on each number.

Q. How do you know that is what they contain, Mr. Lewis? Speak out loud please, sir. I am going to stand up here by you but you speak out. I notice the first number here is 1153.

A. Yes, sir.

Q. That is a four digit number is it not?

A. Yes, sir.

Q. There is no dash or anything in there, just 1153.

A. Not on that particular number, sir, no, sir. Some numbers do have dashes between them. But in comparing the total shown at the top of this page—

Q. And what is that total?

A. One hundred and Seventy-eight dollars, sir.

Q. With the figures on the extreme right of each column, by adding those figures on the extreme right of the column, you arrive at the total of $178.00.

A. Lottery numbers are generally written with the first, the three digit number upon which the bid is being placed and then the next one or two digits being the amount of money placed on it.

Q. Let's see. This is part of Exhibit No. 15, 14. I will extract from that a lottery ticket at random, and ask you how those numbers appear?

A. They appear in identical nature with these numbers here with the exception that all of these numbers have dashes between the first three digits and the other—

Q. As a matter of fact only three of them have dashes don't they—five of them.

A. I only see four, sir.

Q. Yes, sir, four of them. In other words, the three digit numbers followed by a dash and another digit—

A. Another digit indicating the amount bet.

Q. Now, will you total up the last digits on this particular sheet?

A. Forty-two cents.

Q. And what is the figure of the sale down there on that?

A. Forty-two, sir.

Mr. Thompson:

I would like to have the Clerk identify that as part of Govt. Ex. No. 14. It is in a small white envelope with "Billy" on the front of it. The ticket is taken out of that envelope.

Q. Now, you have done the same thing with reference to the numbers on that tablet, sir?

A. Yes, sir.

Q. And what do these figures total?

A. One Hundred and Seventy-Eight Dollars, sir.

Q. Do you find that figure anywhere on the pad?

A. Yes, sir.

Q. Where is that, Mr. Lewis?

A. At the top of the pad near the symbol 12.

Q. You know what that 12 denotes?

A. Generally sir, it denotes the number of the operator or writer accepting these wagers.

Q. On this lottery ticket that I showed you a moment ago, part of Govt. Ex. No. 14, do you find the code number on there of any kind, or name or similar designation?

A. Yes, sir.

Q. And what is the one on that ticket? On the ticket from this exhibit here?

A It appears to be a dash one zero.

Q. That is the name of the identification of the writer?

A. Yes, sir.

Q. I notice on this Govt. Ex. No. 23, up where 178 is written there are some more figures, do you know what those figures are or what they represent?

A. Yes, sir.

Q. What is that, sir? What are the figures?

A. $44.50 and $133.50. Forty-four dollars and fifty cents is exactly 25% of the total of $178.00. The $133.50 is the difference between the $178.00 and the $44.50.

Q. The $44.50 is 25%. Is that right?

A. Yes, sir.

Q. What proportion of lottery or wager that is placed in a lottery operation, bug operation, what proportions of that is paid to the writer generally?

A. 25%.

Q. To the writer?

A. Yes, sir.

Q. And what percentage is generally paid to the pick-up?

A. 10% of the low money, sir. The difference between—

Q. What is low money, Mr. Lewis?

A. Low money is a term given to the difference between the high money or total sales and the writer's 25% commission, sir.

Q. In other words, that is the net after the writer has been paid his 25%?

A. Yes, sir.

Q. And those figures, with the exception of the last percentage that you talked about, those figures appear there on that sheet?

A. Yes, sir.

Q. Now these—have you totaled all of the lottery sales contained in the book there and on those tickets, Mr. Lewis?

A. Yes, sir, I have.

Q. And what is the figure that they total?

A. $732.90.

Q. Seven Hundred Thirty-two Ninety?

A. Yes, sir.

Q. That includes the $178.00 that is in the book?

A. Yes, sir.

Q. And the total of all those lottery tickets?

A. Yes, sir.

Q. Mr. Lewis, when these lottery tickets were first seized from Mr. Clay, were these little tickets that are presently on the outside of most of them, I see, were they on there then?

A. No, sir. I added the adding machine tapes.

Q. And those tapes total the figure you just gave me?

A. Yes, sir.

Q. I am going to ask you, if you will, now to take all of those slips off. Leave the rest of the contents in the condition it is in and remove the tapes.

(Recessed 10:50-11:00 AM)

Q. Have you removed all of those tapes?

A. Yes, sir.

Q. Might I have them?

A. Yes, sir.

Q. Now, what was the total number of bets contained on those lottery tickets and on the paper pad?

A. $732.50.

Q. What is the federal excise tax on that amount of bets?

A. $73.29, 10%.

Q. 10% of the wager is it not, Mr. Lewis?

A. Yes, sir.

Q. The tax that was due for the bets that were placed then that we know about, on July 21st would have been $73.29, is that correct?

A. On June 21st, yes, sir.

Q. On June 21, 1955.

A. Yes, sir.

Q. How many days were there in the month of June on which the lottery could operate, Mr. Lewis?

A. Twenty-two, sir.

Q. Twenty-two days?

A. Yes, sir.

Q. How do you figure that?

A. There were 30 days in the month of June, sir. Eight of those were Saturday and Sunday. There were no legal holidays during which the stock exchange was closed. Eight from 30 left 22 days during which a lottery operation could have been conducted.

Q. Do you know of any exceptional circumstances that existed on the 21st day of June, 1955, which would have made the lottery take any better or any worse than it was on the 21st?

A. No, sir. I do not.

Q. I'll say that another way. I think I ended up where I started. Do you know of any unusual conditions that existed on the 21st that would have made the lottery take better or worse on that day than any other day's operations?

A. No, sir. I do not.

Q. Now, if there were 22 lottery operating days in the month of June and if the average take on those days, the average number of bets on those days was $732.90, and if Mr. Will Parks Clay was the person obligated to

pay the tax, how much tax would have been due for the month of June, 1955?

Mr. Watkins:

Your Honor, we object to that on the ground that the answer would be irrelevant and immaterial in this case, and for the reason that there is no proof that any lottery was operated on any specific day or for any number of days. The answer requires too many assumptions and inferences which are not supported by any evidence in this case. We therefore think that that would be irrelevant and immaterial, be purely an expression of an opinion on a hypothetical question. Assuming facts to be true which are not shown by the evidence to be true and no facts from which a jury might be authorized to infer in this case the correctness of the assumptions supposed by government's counsel. We think that it is not only irrelevant, but would be extremely harmful and prejudicial to admit the witness's answer to the question as the evidence in this case now stands.

By the Court:

What do you say, Mr. Thompson?

Mr. Thompson:

If the Court please, the evidence in this case shows that a lottery operation cannot be carried on for a period of one day, that it requires an organization and an accumulation of events to establish a lottery operation. We submit that the evidence shows that there is a lottery operation. Second, the statutes require all taxpayers to keep certain records. The statute involved in this case required the defendant, if he was operating a lottery, to keep a daily tally of all bets that were placed with him. Mr. Clay produced to the officers no books, and denied that he was in the lottery operation.

We think it is a question of fact for the jury to determine whether or not there was a lottery operation and if there was a lottery operation, then the Collector is permitted under the statutes to determine the tax from all available information. We have put all of the available information before the jury. As for the admissibility of it, we think that the objection goes not to the admissibility but to the weight of it. The question was asked hypothetically for that reason. The jury will have to find whether or not Mr. Clay was in the lottery operation, whether these people were conspiring with him. The jury will have to find whether or not it is a reasonable presumption to place on the amount of the bets that were placed for the other days. We have shown at least three or four other days during the month that there was a brown paper bag similar to the one in which the lottery tickets were seized that went into the house over there. We have shown that on 6 or 8 days during the month, on lottery operation days, he followed the same course of going from Macon to Athens.

By the Court:

Well let me see, even so, aren't you simply asking him to make a mathematical computation?

Mr. Thompson:

If the Court please, it won't amount to that. We have alleged in the indictment that Mr. Clay, in Count Three of the Indictment, evaded a certain amount of taxes during that period. We are attempting to show how we arrived at the figure and our theory of the case. It is a mathematical computation, but it is a computation of tax.

By the Court:

I think I'll sustain the objection. The jury can make that computation as well as the witness.

Q. Mr. Lewis, I will ask you if you had occasion to examine the lottery tickets that were taken from Will Parks Clay on June 21st, and compare those with the tickets that were received from Obie Durham in Macon, Georgia, on June 28th?

A. Yes, sir, I have.

Q. You have personally made such a comparison?

A. I did, sir.

Q. I asked you to prepare a chart which would graphically demonstrate the comparison of which you speak. Do you have that there?

A. Yes, sir.

(Witness handed it to counsel.)

Q. I might state so that the record might show what exhibit we are using. This chart shows seven lottery tickets from Ex. No. 14, and seven lottery tickets from Ex. No. 22. They can be separately identified and all of them from Ex. No 14 have the date June 21, 1955, and all from the other exhibit have the date June 28, 1955. I will ask you, Mr. Lewis, what similarity do you find in those lottery tickets?

Mr. Watkins:

Now, Your Honor, we object to that on the ground that the tickets which have been offered in evidence, and I believe admitted by the Court, speak for themselves. The tendency of the government's proposal now is merely to have this witness make an argument to this jury rather than give the facts when the jury only is authorized to draw whatever inference may be drawn from the

physical characterization of the two sets of tickets that are already in evidence. This is a criminal case. We don't think that a witness should be permitted to make an argument supporting the government's position or, for that matter, the defendant's position. All this could amount to is simply an argument by this witness giving his reasons for the similarity between the two. The tickets speak for themselves. We object to it for that reason.

By the Court:

I overrule the objection.

Q. The question was, Mr. Lewis, can you—I'll rephrase my question and ask you to discuss the similarity existing between the tickets on the first row, tell us what those tickets are, and the tickets on the second row and tell us what those tickets are.

A. Each of the seven tickets across the top of the chart, this part of it, are tickets seized from Mr. Will Parks Clay in Athens on June 21, '55. Each of the tickets on the lower row are part of the tickets, lottery tickets, seized from Obie Durham in Macon a week later.

Q. Now, where did those tickets on the chart come from?

A. They came from the small packages which we seized from Mr. Clay, and which Mr. Pair and Mr. Morris seized from Obie Durham.

Q. You have extracted those from those since they have been here in Court?

A. Yes, sir. The first ticket in the top row bears the book number 22473, and indicates that it is ticket number 1.

Q. What does ticket number 1—page 1?

A. Page 1, yes, sir. It also contains the writer's symbol, F-9. That ticket was seized from Mr. Will Parks Clay. The first ticket on the lower row—pardon me—the upper ticket is dated June 21, 1955. The first ticket on the lower row is dated June 28, '55, and bears the book number 22473. The same number as the one above. It is ticket number 11.

Q. It is a later page number?

A. Yes, sir, and bears the writer's symbol, F-9.

Q. Mr. Lewis, I am not going to ask you to review each one of those that way, but I will ask you to pick another at random.

A. All right sir, the fourth ticket on the top row dated June 21, '55, taken from Mr. Clay, bears writer symbol W-105, book number 11767, ticket number 5—page 5. The ticket directly below that one, which was seized from Obie Durham, is dated June 28, '55, bears writer's symbol number W-105, and bears book number 11767, page number 19.

Q. Now, I will ask you if each of the seven examples up there, if the writer's symbol number on the sample dated June 21st is the same writer symbol number as the one dated June 28, 1955?

A. Yes, sir, they are.

Q. I will ask you then if the same serial number of the book appears respectively in that fashion?

A. Yes, sir, it does.

Q. How about the page number in each case?

A. The page number in each case on those seized from Obie Durham are larger than the page number of those seized from Mr. Clay.

Q. In these lottery books, Mr. Lewis, are the page numbers in numerical order?

A. Yes, sir.

Q. The lowest number being on top?

A. Yes, sir.

Q. Now, I ask you also, Mr. Lewis, how many lottery books are contained in each one of these boxes? Do you know?

A. A considerable number. I can't recall at the moment.

Q. There are ten boxes of them?

A. Yes, sir.

Q. I asked you to extract from the lottery books that were seized in Mr. Clay's residence, books bearing similar serial numbers to those on the lottery tickets that were seized. Have you done that?

A. Yes, sir, I have.

Q. Will you explain just what you have done?

A. Yes, sir. I extracted from the books, I mean from the carton which contained 52 books at the time of seizure.

Q. Which carton was that?

A. I believe it was that one, sir.

Q. Come down here to make certain. From what exhibit is that?

A. Number 16.

(Witness resumed the stand.)

Q. What did you extract from there, Mr. Lewis?

A. Three lottery books which I hold now.

Q. Are those lottery books used or unused?

A. Unused.

Q. Unused lottery books?

A. Yes, sir, number 22721.

Q. Give that number again.

A. Number 22721.

Q. Yes, sir, 22721.

A. Number 92607, number 72512.

Q. Yes, sir.

A. From the tickets which were seized from Obie Durham, I removed ticket dated June 28, '55, bearing the book number 72507.

Q. Seven two five zero seven?

A. Yes, sir.

Q. That is not the same as in the number books that you extracted there, is it, sir?

A. No, sir. That would be impossible, or impracticable, because there is only one book made with a number on it. This ticket could not have come from the same book which I extracted from—

Q. In other words, that serial number on the lottery ticket, 72507, is five number higher than one of the unused lottery books that was seized at the Morton Avenue address?

A. Five numbers lower, sir.

Q. Lower, yes.

A. Also from the lottery tickets taken from Obie Durham I found a ticket bearing book number 92610.

Q. Nine two six one zero?

A. Yes, sir.

Q. And where was that ticket?

A. It was—I took—

Q. What is the date?

A. June 28, '55. I took that from the bag which was taken from Obie Durham, sir.

Q. Yes, sir.

A. From the lottery tickets which we seized from Mr. Clay, I found a ticket bearing the book number 92610.

Q. Yes, sir.

I also found, that is dated June 21st. I also found a ticket dated June 21, '55, bearing the number 22720.

Q. Two two seven two zero?

A. Yes, sir.

By the Court:

Where did that one come from?

A. This one came from the lottery tickets which we seized from Mr. Clay.

Q. All of those exhibits were taken from these exhibits that we have had here in Court?

A. Yes, sir.

Q. Mr. Lewis, I'll ask you to hand me the three books that you referred to, please.

Q. These three books you stated were taken from Govt. Ex. No. 16?

A. Yes, sir.

Q. Hand me the lottery ticket that you identified dated June 21st. (Witness complied.) These two lottery tickets were taken from where, sir?

A. From the evidence which was seized from Mr. Clay.

Q. That is Govt. Ex. No. 14?

A. Fourteen, sir.

Q. And the other tickets, sir?

A. They were taken from Govt. Ex. 22, I believe, sir.

Q. I am going to ask you while you are still here to replace these various other exhibits in the bags that they belong in, so we won't get them mixed up. Mr. Lewis, have you totaled the total wagers that are covered by the tickets that were seized on the 28th from Obie Durham?

A. No, sir, I have not.

Q. You don't have that total?

A. No, sir.

Q. You have not run a total of them?

A. No, sir.

Q. I'll ask you then if you will remove these tapes from them. (Counsel handed them to witness. Witness complied.)

Cross Examination.

By Mr. Watkins:

Q. Mr. Lewis, I don't believe you officers secured a warrant for the arrest of anybody on the 21st of June last year, did you?

A. No, sir.

Q. You secured only a warrant to search the premises at 140 Morton Avenue in Athens?

A. Yes, sir.

Q. Now, you had ample opportunity to obtain a warrant for the arrest of the defendant Clay if you had wanted to get one, didn't you?

A. We had time, sir. Yes, sir.

Q. You got your warrant for the search of the premises here from the Commissioner in Macon before you went up to Athens?

A. Yes, sir.

Q. And you weren't in any particular hurry to get there, were you?

A. Er—

Q. You left early enough to get there by making a leisurely trip?

A. We drove the speed limit, sir.

Q. What time did you leave Macon?

A. Approximately 10:00 o'clock, sir.

Q. Well, you had time if you had wanted to get a warrant for the arrest of Clay or any of these other people, you had time to get it right here in Macon, didn't you?

A. Yes, sir, I think so.

Q. And you just simply didn't make an affidavit for the purpose of getting an arrest warrant?

A. Sir, we didn't feel that we had cause to get an arrest warrant.

Q. You thought you were going to see the defendant Clay that afternoon in Athens?

A. Yes, sir.

Q. And I believe you stated that you are the officer that took from Clay the bag which he carried in his hand?

A. Yes, sir, I did.

Q. And after you took it you told him he was under arrest; probably simultaneously?

A. I really don't remember. There was some confusion there with Mr. Clay running from us, and we had to stop him on the porch.

Q. Now, how was this defendant Mrs. Anderson dressed when you got up on the porch?

A. I don't recall, sir.

Q. You knew she was convalescing from an operation at the time?

A. I understand that she was.

Q. Had just gotten back from the hospital?

A. I didn't know what day she got back.

Q. And she obviously was not well when you were there, you could tell that couldn't you?

A. She spoke all right, sir.

Q. Now, did you get some insurance policies that were found in the house?

A. Sir, we took a strong box containing several items which I did not inventory.

Q. You are familiar with the fact though that there were a number of insurance policies on some children's lives?

A. I believe I actually saw those, sir.

Q. And you all took those, didn't you?

A. We took the strong box and its entire contents.

Q. Including the policies?

A. If they were in there, and I believe they were.

Q. Well, as a matter of fact you know now that you did take the insurance policies?

A. Sir, I actually never saw the contents after we left the house.

Q. Do you remember how many insurance policies there were?

A. No, sir.

Q. Just a number of them?

A. Sir, there could have only been one. I really don't know, sir.

Q. Do you have the tablet that you found in the car up there, which you testified a few minutes ago about?

A. It is on the table there.

Q. Mr. Lewis, these writings "Govt. Ex. No. 23" and "G-3" and all the pencil and pen writings on here, they were not on this tablet when you first obtained it from the car, were they?

A. Not on the tablet cover.

Q. Well, was there any date on the tablet?

A. No, sir.

Q. No date at all?

A. No, sir.

Q. It was simply just undated?

A. Yes, sir.

Q. Well, Mr. Lewis, there were no lottery tickets or lottery paraphernalia in this strong box that you officers seized was there?

A. I saw none in there, no, sir.

Q. In fact I asked you about that last year in a preliminary hearing and you stated there was no such material in the strong box that was taken?

A. Yes, sir.

Q. In other words, you all just took just about everything you found in the house except the furniture. You left that didn't you?

A. No, sir.
Q. You mean you didn't leave the furniture?
A. We didn't take everything but the furniture.
Q. I believe that is all.

(Witness excused.)

Mr. Thompson:

If the Court please, in view of the testimony of the witness this morning, Mrs. Fincher, I think it unnecessary to leave in evidence Govt. Ex. No. 1 and 2; so out of an abundance of caution, I will withdraw those from evidence. I might state that they have not been before the jury.

By the Court:

Any objections to that, gentlemen?

Mr. Watkins:

Your Honor, we objected to the admission in evidence of that matter which he is now withdrawing, and we still think it was error to have admitted them in the first place. I don't think government counsel can cure it, if it was an error, by withdrawing it at this late date. But whatever he wants to do with it he just does it without our approval or disapproval, if we may be allowed to stand mute on it.

By the Court:

Very well, I will permit him to withdraw those two exhibits, and I will instruct the jury to pay no attention to them or to anything that was said about them.

Mr. Thompson:

If the Court please, I tender in evidence Govt. Ex. No. 3, application for telephone service of Mrs. C. C. Rawlins, which was identified by Mr. Homer Mayfield.

By the Court:

Well, now let's see. I wonder if we could shorten this. All of these exhibits have been identified by witnesses and been assigned numbers by the Clerk. Do you propose to tender all of them, Mr. Thompson?

Mr. Thompson:

I do, sir.

By the Court:

Everyone that has been identified?

Mr. Thompson:

Yes, sir.

By the Court:

Are there any objections to them then? I want to save the time of just standing here and reidentifying a number of exhibits unless it is necessary to the defense or prosecution.

Mr. Gautier:

Well, if we could go through them right quickly, we will see.

By the Court:

Very well.

Mr. Gautier:

No. 3, I can't see the particular relevancy of it. Mrs. Rawlins testified she had that telephone number. It just

clutters up the record. That is my only comment on that, in view of her testimony.

By the Court:
Well, I'll admit it.

Mr. Gautier:
No objection to No. 4. No. 5, Your Honor, I believe is a group of toll calls, long distance calls with numbers, initials, and we don't know who made them.

Mr. Thompson:
If the Court please, I might—

Mr. Gautier:
We object to them anyhow, because I don't think they have been identified and connected up with this case.

Mr. Thompson:
If the Court please, the government is willing to withdraw all of these except one, the one that was identified specifically and initialed by the witness as being dated March 20, '55. It represents a call to Atlanta, Georgia, Raymond 1787, over the telephone that is listed up there. The rest of these we had not identified as having a particular purpose, at least to have them, in evidence.

By the Court:
So you are tendering only one?

Mr. Thompson:
I tender only one of those that was specifically identified by the witness.

Mr. Watkins:

That is No. 5. We object to the admission in evidence of that record, Your Honor, on the ground that the proof fails to establish the identity of any person making such a call. We think it is irrelevant and immaterial in that there is nothing on the document or in the evidence in this case to connect any defendant on trial with the record of the call.

By the Court:

What is the evidence as to the telephone calls, Mr. Thompson?

Mr. Thompson:

If the Court please, the evidence is that this, the call that was made on this toll slip, evidenced by this toll slip, was made from a telephone at 140 Morton Avenue registered in the name of Mrs. Clara Willis by the defendant Anderson, that this call was made to Atlanta to a Mrs. C. C. Rawlins. Mrs. Rawlins testified that she received such a call.

By the Court:

I remember the transaction. I overrule the objection and admit the document.

Mr. Gautier:

We raise no objection to 6. No objection to 7, 8, 9, and 10.

By the Court:

Admitted without objection, 7, 8, 9, and 10.

Mr. Gautier:

No objection to 11.

By the Court:
Admitted without objection.

Mr. Gautier:
No objection to 12.

By the Court:
Admitted.

Mr. Watkins:
We object to Ex. No. 13, which is a series of canceled checks representing—

Mr. Thompson:
Excuse me, we will withdraw that exhibit. Save time.

By the Court:
Very well. That is No. 13, withdrawn.

Mr. Watkins:
Now, Your Honor, we object to the admission in evidenct of Ex. No. 14 on the same ground that we have heretofore stated. That is that the search and seizure—the arrest, search and seizure of the defendant Clay, under the circumstances disclosed by this evidence, in Athens on June 21, 1955, was illegal and unreasonable and the evidence is therefore inadmissible.

By the Court:
All right, I admit that exhibit.

Mr. Watkins:
We have the same objection to Ex. No. 15, which we have already stated to Your Honor, which they were testifying about.

By the Court:
Very well, same ruling. What about 16?

Mr. Watkins:
We state the same objection to that, Your Honor.

By the Court:
Same ruling.

Mr. Thompson:
I might state, if the Court please, that part of that exhibit has been separated. The Court will recall part of three of these exhibits have been separated, but we tender them as a group and separate them for the purpose of demonstration.

By the Court:
Very well. What about 17?

Mr. Watkins:
Same objection, Your Honor. All of that came from the house, is that correct?

Mr. Thompson:
Yes, sir.

By the Court:
Same objection and same ruling.

Mr. Watkins:
Eighteen, same objection.

By the Court:
Same ruling. Nineteen?

Mr. Watkins:
Same objection.

By the Court:
Same ruling. Twenty is the check book.

Mr. Watkins:
Same objection.

By the Court:
Same ruling.

Mr. Gautier:
And she is not on trial too, if Your Honor please

By the Clerk:
Twenty-one is a bank book of Mrs.—

Mr. Watkins:
Same objection.

By the Court:
Same ruling.

By the Clerk:
Twenty-two.

Mr. Gautier:
If Your Honor please, we object to these papers, or whatever they are, that were seized from Obie Durham on the ground that there is nothing in here to connect Obie Durham or these papers with any defendant now on trial. It is wholly immaterial to this trial that is now in progress. That is Ex. No. 22.

By the Court:
Overruled and they are admitted.

By the Clerk:
Twenty-three.

Mr. Watkins:
Your Honor, that is the notebook that was seized from the automobile at Athens on June 21, '55, and we state the same objection, that it is inadmissible because it was illegally seized as a result of an unreasonable and unlawful arrest.

By the Court:
Same ruling.

Mr. Thompson:
If the Court please, I would like to also tender in evidence Govt. Ex. No. 24, which is a certified copy of a warranty deed dated July 23, 1954, between Robert Earl Statham and Mrs. Clara Willis.

Mr. Watkins:
No objection to the certified copy of the deed.

By the Court:
It is admitted.

Mr. Thompson:
Will the Clerk identify this please as Govt. Ex. No. 24. Now, if the Court please, we wish to state that we have, as I stated a moment ago, segregated certain exhibits for the purpose of demonstration. We tender those along with the same exhibit that they are a part of. There are seven lottery tickets identified as Ex. 14, that is a part

of Govt. Ex. 14; been introduced in evidence. Seven lottery tickets that are a part of Govt. Ex. 22 that have been accepted in evidence. Also for the purpose of demonstration, we have three lottery books that have been identified as Govt. Ex. No. 16. And four lottery tickets that have been identified, two of them I think as Govt. Ex. No. 22 and two of them as Govt. Ex. No. 14. We wish to have it understood that those are also in evidence under our tender of those exhibits. Of course, the jury realizes we have arranged them in a manner for the purpose of demonstration.

Mr. Gautier:

We object to that being admitted in that form. It's got a lot of argument on there on the part of some agent. If he wants to put them with the regular exhibits, looks like that is where they should go.

By the Court:

What argument does it have?

Mr. Gautier:

Well, its got there: "Seized from Will Parks Clay" and "Seized from Obie Durham", and got them lined up here in such a way—we object to the form.

By the Court:

I overrule that objection.

Mr. Gautier:

All right, sir.

Mr. Thompson:

The government rests.

(Government rested 11:40 AM.)

By the Court:

Proceed for the defendant.

Mr. Gautier:

We have some matters we would like to take up with the Court.

By the Court:

Very well. Take the jury to their room and make them comfortable.

(Jury retired.)

Mr. Watkins:

Your Honor, the defendants, all of the defendants named in count one except Mrs. Cravey, who, of course, is not on trial on account of her illness and absence from the Court, move at the close of the evidence for the government that a judgment of acquittal be entered as to each defendant on trial as to count one of the indictment on the ground that the evidence produced is insufficient to establish beyond a reasonable doubt the allegations set forth in count one of the indictment. That is the conspiracy count.

As to count two, the defendant Will Parks Clay, he being the only defendant named in that count, moves the Court to enter at the close of the government's evidence, a judgment of acquittal in his favor on the ground that the evidence adduced on the trial has failed to establish the allegations in that count.

In addition, as to count three the defendant Will Parks Clay moves the Court at the close of the government's evidence to enter a judgment of acquittal as to him on count three of the indictment, on the ground that the

evidence has failed to establish the allegations contained in that count.

(Argument.)

By the Court:

Let me hear from you on the conspiracy count as to the evidence against the defendants other than Durham and Clay.

Mr. Thompson:

Your Honor, we concede there is not sufficient evidence of Mr. Cotton's implication in the conspiracy to submit him to the jury as a defendant. As to Mrs. Cotton, the evidence shows—

(Argument.)

By the Court:

All right, I am going to grant the motion with respect to Mr. Cotton and overrule the motion as to the other defendants.

Now, I plan to work this afternoon only until about 3:00 or 3:30. I think we will adjourn now and come back at 1:30.

By the Clerk:

Your Honor, Mr. Hadaway, one of the jurors, has asked to be excused a[illegible] the attorneys on both sides have agreed that he might be excused if the trial went beyond today.

By the Court:

The only way I would do that is to have it understood that if you gentlemen want excuse Mr. Hadaway, that is

up to you. I will excuse him with your approval, if it is definitely understood that if for providential reasons in the opinion of the Court it would thereafter become necessary to excuse any other juror, the agreement still stands that we would be willing to proceed with a lesser number than eleven.

Mr. Gautier:
That is agreeable with the defendants.

Mr. Thompson:
It is agreeable with the government.

By the Court:
Very well. So I may excuse Mr. Hadaway at this time then? Is there any use to keep him any longer, or should we bring him back after lunch? I will do either way you suggest.

Mr. Thompson:
The government will be willing for him to be dismissed now, at this time.

By the Court:
And the defendant will too?

Mr. Gautier:
Yes, sir.

By the Court:
Very well. Call the jury in.

(Jury returned to the box.)

By the Court:

Members of the jury, so you will know our plans, we are going to adjourn now for lunch and come back today, please, at 1:30, then we are going to have a comparatively short session this afternoon and work not later than 3:30. We will finish the case then tomorrow. Mr. Hadaway had some plans to out of town and counsel on both sides have agreed that he may be excused and that being true, it will not be necessary for him to come back this afternoon, but rest of the jurors may retire at this time and please be back promptly at 1:30.

(Recessed 12:15-1:30 PM.)

MRS. MARY C. COTTON, one of the defendants, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Gautier:

Q. You are Mrs. Mary C. Cotton?

A. That's right.

Q. Speak out now where these gentlemen on the jury can hear you.

Q. Mrs. Cotton, how old are you?

A. Forty.

Q. You are forty years old?

A. Yes.

Q. And where are you living now?

A. I still live on West Napier, but I don't remember the number. Fact of the business, I haven't even paid any attention to it.

Q. Is that the same place that you lived in in June of last year?

A. No, sir.

Q. That is a different place?

A. Yes, sir.

Q. What was the address that you lived at last year, in June?

A. 3644 West Napier, I believe.

Q. Mrs. Cotton, when did you move to that house at 3644 West Napier?

A. Well, just to the month and to the date I won't be able to explain. It was along in the fall after cool weather had begin, when I moved in there.

Q. Was that fall of 1954 or what year? Last year would be '55. Was it year before last or—

A. Year before last.

Q. That was in the fall of 1954.

A. No—maybe it was in the spring. I won't be too sure about that, because—

Q. Was it winter time or cold weather?

A. It was cold weather and that is what has got me confused. Might have been the early part of the spring or the first part of the fall.

Q. Did you own that house at 3644 West Napier?

A. No, sir.

Q. Well, did you rent it or what?

A. Yes, sir.

Q. Who did you rent from?

A. From Mrs. Maybelle Kennedy.

Q. Mrs. Maybelle Kennedy?

A. Yes.

Q. Do you know Mr. Will Parks Clay?

A. Yes, sir.

Q. Did Mr. Will Parks Clay ever live or have a room at 3644 West Napier?

A. He was living in one room of the house when I rented it.

Q. He was already living there when you rented it?
A. Yes, sir.
Q. Rented the rest of the house?
A. Yes, sir.
Q. Did you rent all of the house or not?
A. No, sir.
Q. How many rooms in that house did you have?
A. Four and the hall.
Q. Four and what?
A. The hall.
Q. And the hall?
A. Yes, sir.
Q. And how many rooms did Mr. Clay have there?
A. One.
Q. One room?
A. Yes.
Q. Now, where was that room located? Mr. Clay's room in relation to rest of the house, front or back or what?
A. The back.
Q. Did you rent Mr. Clay any rooms?
A. No, sir.
Q. Did you ever get any rent from him?
A. No, sir.
Q. Do you know who he rented from?
A. Well, er, the same people that I rented from owned the house, but I don't know whether he rented from her or her husband. That I can't say.
Q. You don't know whether it was from Mrs. Kennedy or her husband?
A. I don't know.
Q. Do you know whether or not there was any padlock on the back room of Mr. Clay?
A. There wasn't any lock. There was a staple.
Q. There was a staple?

A. That fits over a catch where you put a lock, but there wasn't any lock.

Q. Did you ever have a key to the lock?

A. I did not.

Q. You say there was a staple though that—where a lock could be put, is that right?

A. Yes.

Q. But you say you never had a key to any room of Mr. Clay's.

A. No.

Q. And as far as you know, was that room ever locked?

A. No. That room had three doors.

Q. Three doors?

A. Yes. One door that led in, out of the living room into it and there was a door that led out of the hall into it, and there was a door that led out of the bathroom into it.

Q. There were three different doors to that room?

A. Yes.

Q. Mrs. Cotton, were you employed in 1955, to—were you working anywhere?

A. That is last year? Up until June of last year, last of June—no, not up until June, but I did work later.

Q. You worked later?

A. In the year.

Q. Had you worked before that, Mrs. Cotton?

A. Not for a good while, I hadn't.

Q. You hadn't for sometime. Where were you formerly employed though.

A. Well, I had worked for the Bibb Manufacturing Company twelve years.

Q. Worked for Bibb, in a cotton factory?

A. Yes, sir.

Q. Where was your husband employed?

A. Bibb.

Q. Was he working at the Bibb in 1955, last year?

A. Yes.

Q. Now, Mrs. Cotton, there is some testimony in here, you have heard it about some automobiles that were located from time to time, particularly in the month of June, certain dates in June, in your yard or near your house. Do you know anything about any automobiles there?

A. Yes, sir. I owned the '55 Oldsmobile.

Q. You owned a '55 Oldsmobile?

A. A '42 Plymouth, and my husband owned a Plymouth truck but I don't know the model.

Q. Plymouth truck?

A. Yes. It had been an automobile, but it was cut down and made a truck.

Q. What about that '42 Plymouth? What kind of condition was it in?

A. Well, it was—we had er—we were putting a rebuilt motor in it at the time.

Q. That was in June. I didn't have a motor in it, or you were—

A. Well—

Q. You were putting a motor in it?

A. We were putting a motor in it at the time.

Q. Did your husband do mechanical work or not?

A. Yes, sir.

Q. Out—

A. Outside of his mill work.

Q. He did some mechanic work?

A. Just on our automobiles and my brother's.

Q. Now, were there any other automobiles there that you know of?

A. Yes, sir. My brother's sons owned a Chevrolet and a Mercury, but I don't know the model of the Mercury, but er—

Q. Did they keep those automobiles at your place or not?

A. Yes, they stayed with me.

Q. They stayed with you?

A. Yes.

Q. They stayed in the house there?

A. Yes.

Q. Who was that now?

A. L. B. Arnett—

Q. He lived in the house with you at the time?

A. Yes.

Q. And he had a what now?

A. He had a '54 Chevrolet. I believe it was a '54. It was a new Chevrolet, I think it was a '54. And then he had a Mercury, but I don't know the model of the Mercury.

Q. Was that an old or new one?

A. Well, it wasn't a new one, but wasn't too old. It looked good.

Q. Well, beside L. B. Arnett, was there any other members of his family there?

A. Yes, sir, his daddy was there. His daddy stayed with me. He had an old Studebaker.

Q. An old Studebaker?

A. Yes.

Q. What model was that?

A. I don't know, real old.

Q. Was it running or not?

A. Yes.

Q. It would run?

A. Yes.

Q. But it was real old. Was he a crippled man?

A. Yes, he just had one leg.

Q. Now, Mrs. Cotton, where did you purchase this '55 Oldsmobile automobile?

A. I can't pronounce the name just right. Yates or Gates or something like that.

Q. Yates, and do you remember the salesman's name?

A. Mr. Long.

Q. Now, Mrs. Cotton, did anyone else go with you at the time you purchased that automobile?

A. We went down there and talked with this Mr. Yates.

Q. Who is we?

A. Me and my husband.

Q. You talked with Mr. Yates?

A. One morning and then he called his salesman, and his salesman came up to the house and we just only went there one time, until we went there and signed the papers for the automobile.

Q. And that was a '55 Oldsmobile?

A. Yes, sir.

Q. Now, Mrs. Cotton, where did you get the money to make the down payment on that automobile?

A. Have I got to tell that?

Q. Yes, mam, I am asking you.

A. Well, it was some money that I collected from a suit—er 1943 when I had a child to get killed.

Q. You had a child killed?

A. Yes, sir.

Q. How much did you get out of that suit?

A. I got for my part, $2,000.

Q. You got $2,000?

Yes.

Q. And did you collect any other money as a result of that child's death?

A. Well, we had several home policies?

Q. Several what?

A. Policies that we carried at home.

Q. Have some on that child that died?

A. Yes.

Q. How much did you get from the insurance companies on the policies then?

A. Well, we had three that we took out ourselves, and my husband's mother had two that she took out and got disabled to carry them, and we picked them up and carried them on until the child was killed and when the child got killed, she received $500 out of those two policies. Well, she gave it to us, and we got a little better than $600.00 out of the three policies that we carried.

Q. You got that from the insurance companies?

A. Yes.

Q. In addition to the damage suit?

A. Yes.

Q. Who was the damage suit against?

A. Judge Butler was our lawyer, and it was Bowen's truck that—

Q. Bowen?

A. Yes, sir, R. A. Bowen.

Q. R. A. Bowen?

A. Yes, sir.

Q. That is who you got the judgment or got the money from?

A. I guess it would have been.

Q. Now, how did you happen to have that money though in 1955, when you bought this automobile, Mrs. Cotton?

A. Well, I just saved. I would never spend it and my mother didn't want me to spend it as long as she lived. As long as we could live without spending it. So after she died, well then my husband got—we just got tired of purchasing old cars.

Q. And you had a '42 Plymouth?

A. Yes, and that was all I could hear out of him, so we did agree to get one and we did.

Q. Did you have any income yourself in 1955 from any source, Mrs. Cotton?

A. Do what?

Q. Did you make any money off of anything yourself in '55? You said you weren't working.

A. Well, I raised chickens and sold fryers, and I sold milk and butter, and I did sew for people.

Q. Sold butter and chickens and sewed?

A. Yes.

Q. You did that yourself?

A. Yes.

Q. And your husband was working with the Bibb?

A. Yes, and then the two boarders that I had?

Q. Two boarders?

A. Yes, my brother and his son.

Q. You had two boarders, your brother and his son?

A. Yes.

Q. They paid you board?

A. Yes.

Q. Now, Mrs. Cotton, er—have you got that exhibit on this automobile, Mr. Clerk? I show you here Govt. Ex. 11. We will use that. I think you have the original of that. Is that right? Does that appear to be just a duplicate, the one the government has got?

A. This is mine.

Q. That is yours, and that is a copy of it, is it?

(Looking at them carefully.)

A. I was reading to see if it was the same thing.

Q. Appear to be the same thing?

A. Yes.

Q. So we'll use the government one then. Can you tell when you bought this automobile?

A. Well, I ordered it in February.

Q. It was February, 2/17/55, February 17, '55. Is that about right?

A. I think it was three weeks before I received the car, after ordering it.

Q. Think it was sometime before you actually received the automobile?

A. Yes.

Q. Now, after you received that automobile, who used that car, Mrs. Cotton?

A. Well, I used it and my husband used it and I let Mr. Clay use it.

Q. When did you first let Mr. Clay use that automobile any?

A. Well, I lent it to him several times, I don't remember the dates and days, but er—

Q. Well, did you loan it to him any in June of last year?

A. Yes, I did.

Q. What did you loan it to him to use that car for?

A. Well, he said when he wasn't staying in Macon that he lived in Atlanta with an old aunt, but er—I lent it to him for that several times. And I would lend it to him until he could get a—have some work done on his old automobile. He came there with it steaming and smoking.

Q. What kind of automobile was that that was steaming and smoking—you know?

A. Best I remember it was a Buick, but I don't know the model.

Q. You loaned it to him while his automobile was not working right?

A. He was going to have some work done on his. Well, I lent him the automobile. I just lent it to him with—in good faith that he would—that I could trust him, that was it. Because he had done many favors for me.

Q. How long had you known Mr. Clay?

A. Well, I have known him as far back as I can remember.

Q. He had done favors for you in the past?

A. Yes, sir.

Q. What kind of favors had he done for you?

A. Well, er—I never walked up to him and asked him for anything that he refused me. And then one time when I laid at the point of death, one of his wives came in and waited on me and I just feel like that if it hadn't been for her I wouldn't be here today. I felt like one good deed recalled another one.

Q. Mrs. Clay waited on you?

A. Yes.

Q. Now, Mrs. Cotton, while Mr. Clay had that room out on West Napier, I'll ask you whether or not you saw any lottery operations going on out there, or any lottery tickets?

A. I never seen any, didn't know what it was. I've seen more here than I ever seen. I hadn't never seen one until I see you all with this stuff, and if that is what you call lottery, I have never seen it before.

Q. You never seen it before?

A. No, sir.

Q. Did you see any out there on West Napier, any lottery tickets anywhere?

A. No, sir.

Q. Did you receive any calls about any lottery business?

A. No, sir.

Q. Did you have anything to do with any lottery business?

A. No, sir.

Q. Did you ever get any money out of any lottery business?

A. No, sir.

Q. Now, this 1942 Plymouth automobile that you had there, did you buy that yourself?

A. Yes, sir, me and my husband together bought that automobile from a Mr. Tucker that run a filling station out on Napier Avenue.

Q. When did you buy that?

A. Oh, I don't remember. We had it a couple of years before we bought this Oldsmobile.

Q. How much did you pay for that Plymouth?

A. Well, I swapped a piano for it.

Q. Swapped a piano for it?

A. Yes, sir.

Q. And did you buy that truck you said your husband, that cut down truck of some kind?

A. No, he bought that.

Q. He bought that. You didn't have anything to do with buying that?

A. No, sir.

Q. And you say he bought the Oldsmobile?

A. That's right?

Q. I show you here some repair bills, tickets, I'll ask you if you can identify those? This is from Charles H. Yates Motor Company.

A. Well, my husband was driving the car at that time and claimed he backed in—had the door about half way open and was backing out of a drive and hit a brick wall and bruised up the door and we had it repaired.

Q. That is where you had the car repaired?

A. Yes, sir.

Q. Is this where you had a thousand mile check up on it?

A. Yes.

Q. And this is just an estimate on some repairs. Is that right, this one?.

A. All of this is from Yates that I received from Yates.

Q. These are items you received from Yates where the car was serviced or repaired?

A. Yes.

Q. Where did you make any payments on this car, Mrs. Cotton?

A. Well, er—we, I had, er—this man to bring it back from er—seeing about the oil, the check up on it—I paid him.

Q. I am talking about the payment to the finance company?

A. To, no—I always made them to the—where I bought the car.

Q. There where you bought the automobile, you made the payments there?

A. Yes, sir.

Q. I show you here some receipts from the General Motors Acceptance Corporation. One here for $79.93, is that—

A. I paid him one time, I believe. This was after the car was taken that I paid the General Motors man at the house, but all these other receipts I paid them to Mr. Yates.

Q. Paid him there at the Yates Motor Company?

A. Yes.

Q. For this financed car?

A. Yes, they used one receipt to where I paid them. And if you will—

(Witness looking through receipts.)

Q. You don't find any with some figures on the back?

A. No, sir.

Q. But you did make your payments to Yates, and then one payment to General Motors Acceptance Corporation. Is that right?

A. Yes, sir.

Q. Now, Mrs. Cotton, do you recall Mr. Morris, the government agent who testified, coming to your house?

A. Yes, sir, he came there twice.
Q. He came there twice?
A. Yes.
Q. The first time he came there, what happened?
A. Well, it was the next day after Mr. Clay was caught in the automobile. I was standing in the dining room door, between the dining room and the kitchen, and I looked out and I seen him getting out of an automobile, and so I saw the pistol on his side and I knew then it was the law, and so I just stood there and in two or three minutes he had the back screen door pushed open and had stepped into the back porch, and I stepped to the back door and he said "Are you Mrs. Cotton?" and I said "I am", and he pulled out some sort of little badge out of his pocket and said something, I didn't understand just what he said, and he said "Do you own a '55 Oldsmobile". I said "I do". He said "Where is it at?". I said "Well, I don't know as its any of your business", just like that, and he said "Well, you don't own it. You did, but I've got it". I said "What are you doing with it?" and he said that they caught Mr. Clay in Athens for a lottery. And I said "What is that?" He said "You know what it is. We know you know what it is." I said "Well, if I knew what it is I wouldn't have asked you." and er—so we had a cow feed barrel sitting on the back porch full of cow feed, a big old tin drum, and he said "What is in there?". I said "Cow feed", and he said "Where is Mr. Clay's room?", and I showed him, and he said "Will you open the door and let me go in there?", so I just walked through the bathroom and just took the hinge from off the little catch and let him go in and so he kind of searched around on the table and pulled open

some chifforobe drawers and picked up some clothing and walked over and looked up under the bed and come on out and come on back in my side, and er—

Q. Right there, I'll ask you whether or not you had a key or unlocked anv lock on that door?

A. No, I didn't unlock any lock.

Q. All right. Then after he went through Mr. Clay's room back there, what happened?

A. Come on back there and he said, about that time my husband walked up on the porch. My husband and my brother was gone off at the time when Mr. Morris came in. And he said "Mr. Cotton, is that you?". He said "Yes". He introduced himself, the same thing as he did to me. I never did understand just what he said. He said "Do you all own a '55 Oldsmobile" and he said "We do". He said "Well, I've got it', said "We caught Mr. Clay in Athens with it with lottery yesterday". Said "How much did you all pay for that car", and I said—

Q. Did you tell him how much you paid for it?

A. I said "$4100", and er—he said—er, I said "$4100". He said "Well, where did you get it money". I said "I don't know as its any of your business", and so he said—Well, A. Q. begin telling how much down and I said "We paid $1700.10 down, maybe a little more. I can't remember just what". So he ran then out to his car and got a typewriter and come back in there and begin to put all that stuff down, and he said "I've not laid out there in that field on my stomach for 17 days for nothing", said "I know you all are in it", said "I have all of the evidence on you. You might as well tell the truth or I'll take you on down and lock you up". And all this time he was typing off about what we was telling him that we paid for the car, and he did ask me to raise my

right hand and swear to it, which I did. And he did ask me where I got the money that I paid down on the car, had to tell him all that. And then he wanted to know what I spent the money for, and I told him that we had bought a model A roadster at one time out of some of the insurance that we had left, and did buy a Fridgidaire had put a hundred or two dollars in the home that my mother willed to me. He made me hold up my right hand and swear to that, and then he asked me to sign the paper and I did.

Q. Did you tell him all you knew about it, Mrs. Cotton?

A. Yes.

Q. You said he came back out there to see you again?

A. Yes, sir. Then I don't remember just how long it was after that, but then him and another fellow came. The fellow that came with him the first time, I never did learn who he was, and well, I didn't know the one that come with him the second time, but Mr. Pair's face appears to be the man.

Q. This man over here?

A. Yes.

Q. He came with him the second time?

A. And so my brother was watching the ball game, and the little boy, on television and I was laying down with the baby. I had got her to sleep, and then they came to the front door, and my little boy run in there and said "Mama here is the law". I said "Well, tell them to come in", and I set up on the side of the bed and they come on in and I said "What is it now" and he said "Oh, it just a routine check, we got to check up", and he went back then and asked me the kids' names and ages.

Q. Went through and asked a bunch of stuff, history about you and your husband and children?

A. Just asked us our name and age and how much education we got.

Q. All right. Now, at either of those visits, was Mr. Clay present or did he come in?

A. Well, when they started out they turned—they got to the front door and turned and come back and asked was Mr. Clay in. I said "I don't know". I said "I really couldn't tell you whether he is back there or not". And so they went on out and got in the car and I went to the kitchen because it was time for my supper, and so I saw them when they pulled out the driveway. When they went around the house Mr. Clay was coming in the driveway walking.

Q. Did they come back or not?

A. No, er—they, I started across the street toward the store and I believe that Mr. Morris, I saw him walking back up the street. It appeared that they had parked the car way down the street and he came back and drank a Coca-Cola in the store right across in front of my house. I started and I thought it was him and I turned and went back and then sent my little boy to the store, and so I just went on with my supper.

Q. Did you have any conversations though at any time with Mr. Clay about this automobile, in front of Mr. Morris, or in his presence?

A. Yes, Mr. Morris was telling me that he had Mr. Clay in Athens in jail and he wouldn't get out. And so about the time that he told me these words, Mr. Clay drove up.

Q. Was that the first visit or the second visit?

A. Yes.

Q. That was the second?

A. Yes, sir. And Mr. Clay drove up and Mr. Clay went on in his room and when he came out, I said "Mr. Clay, what about my car. You told me if anything happened to it you would pay for it", and we kind of got in a little rough argument. Mr. Clay said "No, I didn't tell you that. I told you if I wrecked the automobile".

Q. That was said in front of Mr. Morris?

A. To Mr. Clay. That is what I said to Mr. Clay about what was he going to do about my automobile, that he promised to pay for it if anything happened to it, and he said he didn't, said he said if he wrecked the automobile he would pay for it.

Q. Let me ask you this, did you know Mrs. Anderson over here in June of 1955?

A. I saw Mrs. Anderson yesterday for my first time.

Q. You mean—did you know her back in June?

A. No.

Q. Had you ever seen her before?

A. No.

Q. Do you know Mrs. Cravey or Mrs. Clara Willis?

A. No.

Q. Did you know her in 1955?

A. I don't know them at all.

Q. You don't know her at all?

A. No.

Q. Do you know Obie Durham, a negro?

A. No.

Q. You ever seen him that you know of?

A. If I have ever seen him, I don't know it.

Q. You don't know anybody by that name?

A. No.

Q. Let me ask you this. Mrs. Cotton, did you ever enter into any kind of an agreement with Mr. Clay

or Mrs. Anderson, or Mrs. Cravey, or Obie Durham, or your husband about the lottery business, or going into the lottery business or engaging in the lottery business?

A. I never heard anything about the lottery business until Mr. Morris told me that he caught Mr. Clay for lottery. And I didn't know whether you drank it or what you done with it.

Q. Well, now did you ever enter into any agreement with anybody about the lottery?

A. No.

Q. Have you ever heard of the bug business?

A. No, I don't think I have.

Q. Have you ever played it?

A. No.

Q. Have you ever seen it before?

A. No.

Q. Seen any tickets before?

A. No, sir.

Cross Examination.

By Mr. Thompson:

Q. How long have you known Mr. Clay?

A. Well, I have knowed him as far back as I can remember anybody.

Q. Well, how far back is that?

A. I am forty years old.

Q. And you have known him ever since you can remember?

A. That's right.

Q. When did he first move into the same house that you were living in?

A. He was there when I moved in there. Now, I don't know when he moved in there.

Q. The Napier Avenue address was the first time that you and he ever lived in the same house?

A. Yes.

Q. Have you ever had any social relations at all with Mr. Clay, or his family?

A. Well, I have been in his mother's home time after time, with my mother when I was a small child coming up.

Q. During the years 1952, and 3 and 4 and 5, how frequently would you see Mr. Clay?

A. Well, I didn't see him too much then because I were working back then in the mill, but maybe once or twice a week, maybe Iseen him in passing—something like that.

Q. And how frequently did you see him during the period that he was living there in the same house that you were in?

A. Well, I just seen him go in and out every day.

Q. What time would he leave in the morning?

A. Well, now I never noticed the time, but that—sometimes between—well, he did stay there at night. But I couldn't tell you how much at night and what time he would come in or nothing about that.

Q. How big a house was that?

A. It was a five room house with a big hall and bath.

Q. And the rooms that you occupied were all right around his room weren't they?

A. It was a back room on the right hand side going out towards the front.

Q. Well, during the period of time that he was living there in your house and during the period of time that you have known him, do you know what occupation he engages in?

A. No I don't.

Q. Have you ever known what he does for a living?

A. Well, he used to work in the mills.

Q. How long ago was that?

A. Well, I heard my mother talk about he was her boss, and when I was a child—so I really wouldn't know about that.

Q. You don't know where he was working during the period that he was living there in your house?

A. No.

Q. You don't know what source of income he had during that time?

A. No.

Q. Now, you did live at 126 College Avenue here in Macon, did you not?

A. I sure did.

Q. When did you move there, Mrs. Cotton?

A. Just right off hand I couldn't tell you the month, or know the date, but I lived there during the winter time, I know. It might have—must have been that I moved to West Napier the first of the spring, because I did live there one Christmas, at College. I moved there before Christmas and lived there Christmas and I was living there when I got the '55 Oldsmobile.

Q. You were living there when you bought the Oldsmobile in February?

A. Yes, so I must have moved to West Napier in March or maybe later than March.

Q. How soon after you moved in the address at 126 College Street was it that you had a telephone installed?

A. Well, there was a telephone there when we moved there.

Q. Was it connected up?

A. No, and so my husband went down and a day or two after we moved in there, maybe before we moved in there, and had it turned on.

Q. Your mother did that?

A. My husband. I don't remember whether—it was turned on though after we moved in there. I don't know whether he signed up for it before we moved in or right after we moved in.

Q. Then if there was a telephone connected up there about November the 8th, that would pretty well fix the time generally when you moved there, in November of 1954.

A. Well, if it was turned on then, er—I just couldn't give you the month and the date that we moved in there, but there was a telephone in there, and two or three days after we moved in the boy did come and turn it on. So I don't know whether my husband went down before we moved in or after to have it turned on.

Q. How many people lived in that house?

A. Well, my brother, his son—

Q. Yes, sir. He wasn't staying with me when I first moved there. But we did board some man that was a mechanic. I believe his name was Johnson, best I can remember. And I rented out the upstairs, but I never did learn the people's name.

Q. Were all of the people that were living there, there weren't any colord people living there in the house were there?

A. Why no.

Q. All white people living there?

A. Sure were white.

Q. And while you were living there, did you frequently receive visits from Mr. Clay?

A. I got him to come by there two or three times about repairs of the back porch.

Q. Mr. Clay owned that house?

A. Mrs. Agnes Clay is the one that signed my receipt.

Q. Miss Agnes Clay is the one that signed the receipt?

A. Yes.

Q. Who did you pay your rent to?

A. I paid it to Mr. Clay.

Q. Do you know who actually owns the house?

A. No.

Q. How did you happen to rent a house from Mr. Clay?

A. Well, I was just living in a little old house that was all to pieces, and didn't have a yard and it was just about in the same spot where my oldest one was killed and I just wanted to get out of it, and so I thought his place on Napier was vacant and I went and talked to him one day and he said it wasn't then. He had some stuff stored in there, and that he did have a house on College Street he could let me have. And that is the reason I rented the house.

Q. You said you went and talked to him. Where did you go to see him, Mrs. Cotton?

A. I went one time to Napier Avenue, and then I went another time and talked to him up on College Street, I believe it is College.

Q. On College Street?

A. I believe its College. I won't be sure.

Q. Where is that on College, up near the corner of Oglethorpe and College right near Tatnall Square?

A. It is right there at the park, but I don't know the name of streets.

Q. Was that his residence or business?

A. I don't know. He was there—I saw his car and that is why I stopped there. I don't know whether he lived there or not.

Q. What was that old car, that '41 Buick you saw?

A. If it's a '41 it's an old Buick.

Q. You just saw his car there and you stopped and went in?

A. He was on the front porch.

Q. And where was that Napier Avenue address you went to see him at?

A. I don't know the number, but it was on Napier Avenue.

Q. That is that place you heard somebody say burnt down?

A. Yes.

Q. Do you know when that fire occurred?

A. Really I—I can remember back about when it was, but the date and all I don't.

Q. Now, you heard your neighbor across the street testify about people coming to your house, while Mr. Clay was there on various occasions, who were those people?

A. Well, my brother's son that stayed with me, he brought his girl friend by and I had people coming, and my kinfolks, but the people upstairs, they'd come all the time, and I don't really know who the people were coming in and out all of the time.

Q. You know who the colored people were that came there with packages in their hands?

A. If there was ever any colored people coming in there I didn't see them.

Q. You know who the white people were with small packages?

A. I didn't see any white people come with small packages.

Q. How long did Mr. Clay stay there when he came?

A. If he was ever by there over two or three times I don't know it.

Q. Did he ever come by and pick up your nephew's automobile, L. B. Arnett's automobile?

A. That, I couldn't say because I didn't loan him no automobile. I'll just have to let Mr. Arnett speak for himself, because I never loaned him Mr. Arnett's automobile any of the time.

Q. Do you know of Mr. Clay using Mr. Arnett's automobile?

A. Well, yes, out on West Napier I do.

Q. But up here on College you don't remember him using it?

A. No.

Q. Where did Mr. Clay park his car when he came to see you?

A. Out in the side of curbing.

Q. Right in front of the house?

A. Well, not exactly every time in front of the house. because there would be—the next door neighbors had automobiles and two on one side and two or three on the other side, and they would park out there sometimes and I—one time I remember him parking across the street.

Q. He never would park around the corner or up—he had no reason to park down on Riverside or up at Bond Street would he?

A. Not that I know of.

Q. Only times you know of him coming there he parked right close by the house?

A. Yes.

Q. What kind of car was he driving on those occasions?

A. The Buick.

Q. Did he leave in the same car that he came in?

A. I don't know. I didn't watch him.

Q. Now, just when was it that you moved out to Napier Avenue, Mrs. Cotton?

A. Well, I guess it must have been in the spring, because it was after I bought the Oldsmobile that I moved out there. But the month I can't remember that.

Q. It would have been sometime after February 17th. Just why did you move from Mr. Clay's house?

A. Well, the back steps was rotten and they were high from the ground and the house leaked and the back porch, it had big holes where the kids had skated on the porch and had broke the floor, and so I just couldn't stand these fire trucks whistling along at night, and it just got on my nerves.

Q. Did you tell Mr. Clay you were going to move?

A. Yes, I told him I was going to move.

Q. When did you tell him?

A. I told him if he didn't fix the house I would move.

Q. Well, where did you go to tell Mr. Clay that?

A. I told him right there in the yard.

Q. What was he doing there in the yard?

A. I was showing him the work that needed to be done on the house. And he just said that he wasn't in position of repairing it, that he rented it as it was.

Q. Where did you go to pay the rent to him, Mrs. Cotton?

A. Up on Napier.

Q. You went up on Napier?

A. Yes, sir.

Q. And when was the last time you paid the rent to him?

A. I paid it all to him at one time. I paid him for nine months in advance.

Q. Well, then you lived there about nine months?

A. Well, I lived there from in the fall, before Christmas, until I moved to West Napier.

Q. Was that nine months?

A. I figure it was about eight.

Q. And if you moved there in November of 1954, then it would have been about July or August when you moved, wouldn't it Mrs. Cotton?

A. No, it wasn't that late when I moved.

Q. Then you didn't pay him nine months rent or eight months rent, did you?

A. I paid him nine, but I didn't live there my nine months out.

Q. Did you pay it in advance?

A. Yes.

Q. In other words, when you moved there you paid him nine months rent?

A. That's right.

Q. Then, he had no occasion to come there to collect rent front you, did he?

A. No.

Q. How did you happen to move into the house out on Napier Avenue. It is rather remote from town. How did you happen to find that place?

A. Well, I just lived out in that section all my life. And that is where all my people lived and I went out there every day, and I seen some people moving and I just went and asked the owner about the house.

Q. And it was just a coincidence that Mr. Clay had a room there too?

A. Well, I didn't know he had the room there until after I had rented the house.

Q. Did you know that somebody had a room there?

A. Well, I knew that the house was fixed for two families, and I knew when one family moved out; and so later on then when I went back I saw this other family moving and I went and asked the owner for the house.

Q. Now, Mrs. Cotton, who made arrangements to have your telephone switched from the College Street address to the Napier, West Napier address?

A. Well, I called them and asked them to transfer it and they didn't have an open line and she said as quick as she had an open line that she would install the telephone.

Q. And did they install one?

A. And so they just came out and turned that, I don't know how long it was, right after that, but it was a short time and they come out and turned the telephone on.

Q. And that telephone was already in Mr. Clay's room and you just left it there?

A. It was sitting in the back room and so he said he could, if I would let it stay in there he could use the telephone; that if he made any long distance calls he would pay for them. And my baby was so bad about bothering the telephone anyway, and so I just left it back there and the door was left open where I could get in and out when I needed to use the phone.

Q. As a matter of fact, he gave you a key to the door?

A. There was no key to the door.

Q. Who gave you the key to the door?

A. There was no key to the door.

Q. How did you get in and out then?

A. The doors was just opened. They weren't never locked.

Q. He never did lock his room while he lived there?

A. Not without he locked it when he was in there asleep.

Q. How did you handle calls that came to you at night? Mr. Clay answer it?

A. I don't have any telephone calls at night.

Q. You knew you weren't going to have them, so you didn't mind having the phone in his room?

A. That's right.

Q. And you were willing for the phone to be in your name, or your husband's, and in his room there?

A. Yes.

Q. When you bought this Oldsmobile, Mrs. Cotton, was it a brand new automobile?

A. Sure was.

Q. Just in?

A. I just went down there and was looking over the cars, like I said, and I talked to Mr. Yates and I told him that I was going to buy one; that I was intending on buying a Buick. But after I saw the Oldsmobile, I liked the Oldsmobile and I just told him that I wanted one. They had one there something like the one I bought, but it was a different color and I told him I didn't like that color; that I either wanted a black or a dark blue, and so they just made me one just like I wanted. I had two tone blue seats in it, covers, and door panels, and just had it fixed just like I wanted it.

Q. Now, previously you had owned automobiles, hadn't you.

A. Yes.

Q. And what was the latest model you had ever owned before then, Mrs. Cotton?

A. Well—

Q. You had the one you had traded the piano for. What other automobiles did you own at that time?

A. Well, we had owned Studebakers, but kind of late models. But we never owned a new automobile until we decided to buy that one.

Q. That was the first new car you ever had?

A. That nobody had ever drove, yes, sir.

Q. Nobody had driven it when you got it?

A. That's right.

Q. The first new car you ever bought then was that Oldsmobile you bought while Mr. Clay lived in the house with you?

A. Yes.

Q. Is that right?

A. No, Mr. Clay wasn't living in no house with me.

Q. You had the automobile when you went out there to live?

A. I bought the automobile when I lived on College Street, and Mr. Clay wasn't living in the house with me on College Street.

Q. And it was a brand new automobile?

A. It was a brand new automobile.

Q. You bought that automobile on 2/17/55. Is that correct? February 17, 1955?

A. Yes.

Q. Just exactly what did you use the automobile for?

A. Well, we run around here in town with it, and went to Forsyth in it and just for our personal use.

Q. Did you use it a whole lot, or just a little bit, or just like you would normally use a family car?

A. Just—I drove it and my husband drove it, just when we took a notion to drive it. Both of us would drive it.

Q. Both of you would drive it?

A. That's right.

Q. Did you take any long trips in it?

A. Well, we went to Forsyth and went all up in Monroe County, just taking in the country.

Q. A new car and you were just trying it out, huh? When did you first start letting Mr. Clay use the car?

A. Well, I let him use it once, I do remember, up on College Street. But after I moved out to West Napier, I let him use it several different times. I don't remember the number of times that I let him use it. But for the last week before he was caught in it, I let him use it regular then because his was smoking and boiling. The radiator or something, I don't know what was wrong with it.

Q. Where did he leave his car during that time?

A. Well, part of the time it would sit there in the yard and when it wasn't there, I don't know where it was at.

Q. Did he ever have his car and your car both gone at the same time?

A. Well, I didn't want his car there noway, because I couldn't drive it.

Q. Yes, man, but you didn't want it there—but did he ever leave his car there and take your car?

A. Well, there were always a car there that I could use, and he told me that he was having some work done on his car while it wasn't there.

Q. As a matter of fact, during that week you are talking about neither one of the cars was there hardly ever at all, except when he drove up in the yard and drove off with one?

A. I had the use of it in the day time. Pretty near any time of the day that I wanted it. He'd come in early in the morning with it and would leave out along about noon or maybe later in the evening. It was just in and out there all the time.

Q. On February 21, '55, you had had your car four days more than a month, hadn't you?

A. Make me understand what you are saying.

Q. On March 21, 1955, your automobile was just a month and four days old, wasn't it? You bought it in February, a month later, it was just a month old, wasn't it?

A. It was a new car when it was took, when they grabbed it. I don't remember—

Q. Yes, man, but what I am asking you is that on February 21st—

A. That is when we ordered the car. I believe it took us about three weeks to get it and then the following June is when it was took.

Q. You bought the car though on February 17, 1955. That is when you gave the man your $1700?

A. Yes.

Q. On March 21st, that would have been just a little over a month later wouldn't it, of 1955?

A. Yes, it would have been a little over a month.

Q. And the car was brand new when you got it, wasn't it?

A. Yes.

Q. This is a bill you identified a moment ago as being some repairs made to the car?

A. Yes, sir, this is where my husband claimed he backed into the wall and had the door about half open and damaged the front door.

Q. What is the date on that bill?

A. Well, it is the second and twenty-first, '55.

Q. Is that the third or the second?

A. Well I, it looks like—well, maybe it is a three. I don't know. It is kind of made bad.

Q. How long had you had the car before he had this accident?

A. Just a short time. After we got the car was when he had the accident.

Q. I am going to ask you, Mrs. Cotton, to read this figure right here. What is that figure?

A. 3981.

Q. Thirty nine hundred and eighty one, and what block is that in on that invoice? What does that say?

A. I tell you my eyes—I can't see.

Q. It says speedometer, doesn't it?

A. I can't see those little words.

Q. You can't read that, but if the word up there is speedometer, the number that is under it is 3981 miles, isn't it.

A. I don't know how you read miles on one.

Mr. Thompson:

I would like to have this document identified as Govt. Ex. No. 25, invoice of Yates Motor Company, invoice No. 1817 dated March 21, 1955.

Q. Now, where did you go in your automobile during April, Mrs. Cotton?

A. Well, now you are just asking me something that I can't answer you. We just went anywhere we wanted to go.

Q. Well, did you drive a whole lot or stay home?

A. Yes, sir, I told you we stayed gone might near all the time.

Q. I'll ask you if you recognize this document, Mrs. Cotton?

A. Is this the repairs to the door?

Q. Well man, just what does it seem to be? It is Mrs. Mary Cotton. It has your name on it and you just talked to your lawyer about it a minute ago. Now, can you tell what that is? That is a repair bill that you paid?

A. Yes, and three notes.

Q. That is when you paid three notes on the car. Now, what was the mileage on the car there? Just a little more than a month, what is that—from March 21st? The date of that is May the 9th, isn't i? How many miles had the car been in that time?

A. Best I can see it had been 5964.

Q. About two thousand miles from the time the other bill was given?

A. I don't know about that.

Q. Who was using your car during that time, Mrs. Cotton?

A. Well, it is like I said, We used it and we let Mr. Clay use it and so I don't know which one of us was using it. You mean when the door was wrecked?

Q. No man, between March 21st and May 9th of 1955?

A. Well, I don't remember.

Mr. Thompson:

Identify Charles H. Yates Motor Company's invoice No. 2588 as Govt. Ex. No. 26.

A. We all used it and that is as far as I can tell you. I can't tell you the dates.

Q. Were all of you using it at that time?

A. Well, not all at one time. But from day to day we would use it.

Q. Was Mr. Clay using it about that time, March 21st of '55?

A. Well, I can't remember whether he drove it that day or not.

Q. Did Mr. Clay always ask you before he took your car?

A. Yes.

Q. As a matter of fact, do you know how many miles were on that car when the Treasury Agents seized it?

A. Well, it is like I tell you—like I told you, Mr. Morris, I don't know how to read the mileage on the cars, but just estimate—I imagine there was right around 6000. There might not have been and there might have been more.

Q. Around how many?

A. Six thousand miles I imagine.

Q. As a matter of fact, it was right around 8000, wasn't it?

A. Well, it like I said. I never look at the speedometer and I don't know how to read the mileage, and I just won't know.

Q. The car was a little over four months old and there was about 8000 miles on it, wasn't there?

A. I just told you I didn't look at the speedometer. I didn't know what was on it.

Q. Other than this money that you have received from the regretable incident concerning your child, did you have any other income or any other funds or money?

A. Well, I just told you that I did sell milk and butter, and chickens and sewed for people.

Q. How much income did you get from that source?

A. And then the two boarders that I had, and I did sell some cattle that I had, two cows out in the country that I had sold a man that I had paid in on this automobile.

Q. Well, did it take substantially all of your saving to make this down payment on the car.

A. Well, see we had the down payment, that was out of the two thousand that I received from my child getting killed.

Q. You had that money in a sock didn't you?

A. Sure did.

Q. In your house?

A. Well, I ain't going to tell you whether I had it in my house or not, but I had the money in a sock.

Q. Well, did you have any other money in that sock?

A. Yes, I had a little more money in that sock.

Q. How much would that amount to, Mrs. Cotton?

A. Well, I had $300 that my mother left when she died.

Q. Did you have any other money other than that?

A. Well, I had some of my savings when I worked.

Q. And did you have a bank account or—

A. No.

Q. As a matter of fact, when you went to buy that automobile you told—in giving a financial statement, you told them you have money from some houses you sold, didn't you?

A. Well, I had sold houses.

Q. And you told them that you had just recently sold five houses?

A. No.

Q. You didn't tell them that?

A. No.

Q. Mrs. Cotton, I hand you a document here and ask you, is that your signature signed to the bottom of it?

A. Well, that is my signature, but I didn't tell them where I got the money and that I sold—I did tell them that I sold houses, but I didn't tell them that I had recenly sold no five houses.

Q. Then up here where it says just recently sold five houses, you didn't tell them that?

A. I didn't tell them I just recently sold no five houses. I told them I had sold some houses.

Q. That is your signature?

A. Yes.

Q. And this is a customer's statement. When was that signature signed on there? Do you know?

A. I don't know.

Q. What is it over here? You did sign that?

A. Yes, that's my signature.

Q. You gave that in connection with buying the car?

A. No, I didn't tell them I had to sell the houses to buy no car.

Mr. Thompson:

Identify this please, as Govt. Ex. No. 27. Govt. Ex. No. 27 is entitled Customer's Statement.

Q. Did you still have your $300 in the sock, Mrs. Cotton, when you—when the automobile was seized?

A. Yes, I had money when it was—when they seized the automobile.

Q. You still have it?

A. Yes.

Q. Now, you told Mr. Morris when he was out there—

A. I told him it wasn't any of his business. That's what I told him.

Q. You meant that too, didn't you?

A. I sure did.

Q. But just the day before you told Mr. Morris you had borrowed $68.00 from Mr. Clay?

A. No.

Q. What did you tell him?

A. I told him I owed Mr. Clay $60.00.

Q. For what? A cow, wasn't it?

A. Yes.

Q. When did you borrow that from Mr. Clay?

A. I got it, well, the day he was caught.

Q. You borrowed it?

A. That morning I borrowed $60.00 from him to buy a cow because I didn't want to break what I had.

Q. How much money was your husband earning during this time?

A. Well, I don't know. It was just different things each week, not the same thing every week. But when he wasn't working in the mill he worked on other jobs.

Q. Did you use his money to pay for the car, or use the money you had earned?

A. Well, it was both of us money. That was from the child getting killed, is what we used.

Q. I am talking about the payments you made on the car, Mrs. Cotton. These monthly payments that you were making, they were charging you interest on?

A. I took the boarder and I used some of his money—and the board money and what I had after feeding my cows—I would save that. And then I sold

the cattle I had out in the country and paid that on the automobile.

Q. That is the $342.00 you paid, you sold some cows?

A. I sure did.

Q. That paid the notes up in advance?

A. I had the notes ahead when the car was taken.

Q. Did you ever pay Mr. Clay his $60.00?

A. Yes, I did.

Q. What explanation did Mr. Clay give you as to the loss of your automobile?

A. You mean what has he give me for losing the automobile?

Q. Yes, mam.

A. Nothing.

Q. You still paying the notes on it?

A. I paid one note on it, and so I haven't paid any more on it.

Q. You haven't paid any more notes on it?

A. No.

Q. What was his story about how he lost the automobile—what he say happened to it?

A. He didn't say. Mr. Morris was there and Mr. Morris done told me and so Mr. Clay hasn't told me anything.

Q. You were telling us a moment ago about a conversation where he said he was just going to pay for it if he wrecked it?

A. He said if he wrecked it, so he had not made me no promise that he would pay for or will pay for it since then.

Q. Did you ask him though what happened to it?

A. Mr. Morris told me that they took it and I asked him if—what about my car. Was he going to pay for it like he had promised to pay for it if any-

thing happened to it. He said he didn't say it that way, he said if he wrecked the automobile.

Q. You didn't ask Mr. Clay anything about what had happened to the car though?

A. What was the need when the law was right there and had done told me.

Q. That was your car that you had paid $4100 for and you didn't ask him what happened?

A. I will pay $4100 when I get through paying for it.

Q. But you didn't ask Mr. Clay what happened to the car?

A. Well, he knew that I knew, because there sat the law.

(Witness excused.)

MRS. CLAUDIE WILLIAMS, being called as a witness by the defendant, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Gautier:

Q. You are Mrs. Williams?

A. Yes.

Q. What is your first name?

A. Claudie.

Q. What?

A. Claudie.

Q. Mrs. Williams, where do you live?

A. 3693 West Napier.

Q. Do you know Mrs. Mary Cotton?

A. Yes.

Q. How long have you known Mrs. Cotton?
A. Oh, about 25 years.
Q. Do you live anywhere near where she lives?
A. I live next door to her now.
Q. You live next door to her now?
A. That's right.
Q. Back in June of last year, were you in the same neighborhood with her?
A. Yes, about two blocks from her.
Q. Do you know her general reputation in the community in which she lives? What people said about her, what her reputation was?
A. Well, it is good as far as I know.
Q. Do you know her reputation?
A. Yes, its all right.
Q. Is it good or bad?
A. It's good.

(No cross examination, witness excused.)

MRS. WILLIE MAE EVANS, having been called as a witness by the defendant, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Gautier:
Q. What is your name?
A. Willie Mae Evans.
Q. Where do you live Mrs. Evans?
A. 3681 West Napier Avenue.
Q. Do you work, Mrs. Evans, or not?
A. No, sir, I don't.
Q. Do you know Mrs. Mary Cotton?

A. Yes, sir.

Q. How long have you known her?

A. I was with her mother the night she was born.

Q. Known her since her birth?

A. Yes, sir.

Q. Do you live anywhere near where Mrs. Cotton lives now?

A. Next door.

Q. You live anywhere near where she lived in June of last year?

A. I lived half a block down the street.

Q. About a half a block? Did you go in that house on 3644 Napier Avenue where she was living in May and June of last year?

A. Yes, I did.

Q. How frequently would you go in that house?

A. I went in there about three times a week to get milk and butter.

Q. You bought milk and butter from her?

A. Yes.

Q. Did you know Mr. Will Parks Clay?

A. I have known him about 35 years.

Q. Did you ever see Mr. Clay out there?

A. I saw him one time.

Q. One time there?

A. Yes, sir.

Q. And did you know what room he stayed in in that house?

A. He lived in the back room, so Mary told me.

Q. Well, did you know where that back room was?

A. I have been in it.

Q. I will ask you whether or not you, at the times you visited there in May and June of last year, you have ever seen a padlock on that back door?

A. No, sir, I saw a hasp and staple, but no lock.

Q. Do you know the general reputation of Mrs. Cotton in the community in which she lives; what people say about it?

A. Well, so far as I know she has got a good reputation.

Q. Got a good reputation?

A. Yes, sir, so far as I know.

Cross Examination.

By Mr. Thompson:

Q. Did you say your name is Mrs. Evans?

A. Yes, sir.

Q. Where did Mrs. Cotton get her milk and butter that she sold you in May and June of 1955?

A. She owned a cow. She didn't sell it to me, she gave it to me.

Q. She just owned one cow during that time, didn't she?

A. Yes, sir.

(Witness excused.)

MRS. LUCILLE HOWARD, having been called as a witness by the defendant, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Watkins:

Q. Is your name Lucille Howard?

A. Yes, sir, it is.

Q. I believe you have already been sworn as a witness in this case?

A. Yes, sir, yesterday.

Q. Where do you live, Lucille?

A. 3606 Atlas Street in Bellevue.

Q. Do you know Mrs. Mattie Bell Anderson, one of the defendants in this case?

A. Yes, sir, I do.

Q. How long have you known her?

A. I imagine about ten years.

Q. Do you know the defendant Mr. Clay?

A. Yes, sir, I do.

Q. How long have you known him?

A. About thirty-five years.

Q. Do you recall that last year, 1955, around May or June, Mrs. Anderson was living up at Athens, Georgia?

A. Yes, sir, I do.

Q. Did you go up there to Athens to live for any length of time?

A. No, sir, I didn't go to live. I went to work.

Q. Well, I mean to work for her.

A. Yes, sir, I did.

Q. Now, when did you go up there?

A. About the last of May. About a week before school closed.

Q. 1955?

A. Yes, sir.

Q. Now, why did you go?

A. I went to take care of Mrs. Anderson's children and take care of her while she had her operation.

Q. Was she sick at that time?

A. Yes, sir, she was.

Q. When you went there the last of May?

A. Yes, sir, she was sick—under the care of the doctor.

Q. Now, did you stay there in the house while you were in Athens?

A. Day and night.

Q. What was your job?

A. To cook, to clean, to wash and iron and tend to the children and Mrs. Anderson.

Q. Do you mean now to testify that Mrs. Anderson was too sick to take care of the children and cook for them?

A. Well, that was what the doctor told her. The doctor told her not to do anything. That was the doctor's orders.

Q. How long did you stay there doing that kind of work before Mrs. Anderson went to the hospital?

A. I went there on Sunday and Mrs. Anderson went to the hospital the next Tuesday.

Q. And did she have this operation?

A. Yes, sir, she did.

Q. Do you remember when the officers came there?

A. I do.

Q. How long had Mrs. Anderson been back from the hospital when they came?

A. About a week.

Q. Was she well at that time? The day the officers came?

A. No, sir, she was not.

Q. Was it or not still necessary for you to do all of the work and look after the children?

A. Yes, sir, it was.

Q. Do you know anything about any lottery business being carried on in that house?

A. No, sir, I do not.

Q. Did you ever see Mrs. Anderson doing anything toward carrying on a lottery business?

A. No, sir, I did not.

Q. Was she physically able to do anything?

A. No, sir, she was not while I was there, and when she got able to do her work I left.

Q. How long did you stay in order to look after her and those children after the officers came and arrested—

A. Over a week.

Q. And then where did you go?

A. Come back home, to Macon, 3606 Atlas Street.

Cross Examination.

By Mr. Thompson:

Q. Lucille, when did Mrs. Anderson move to Athens, Georgia?

A. That, I couldn't tell you.

Q. How long did you say you knew her?

A. About ten years.

Q. You haven't been in very close contact with her?

A. No, sir.

Q. You don't know how long she lived in Athens?

A. No, sir, I don't know how long she lived in Athens. I knowed her though before she went to Athens, when she lived in Macon.

Q. And how long did you stay there after Mrs Anderson and Mr. Clay were arrested?

A. About a week.

Q. And she was able to take care of her work after that?

A. That, I don't know. I guess so, but I don't know who left—but I left.

Q. Why did you leave?

A. I just come home. I just went up there to take care of her children and things while she was in the hospital. When she come home, I come home.

Q. When she came home, was she in bed?

A. She wasn't just confined to bed, but was just lying around.

Q. Were you in her bedroom there?

A. Oh, yes I was in her bedroom. You know cleaning up and—

Q. Did you ever see those two adding machines that they had in there?

A. No, sir, I did not.

Q. Never saw two adding machines?

A. No, sir, I haven't seen anything like that.

Q. Did you see them the day the officers seized them?

A. No, sir, because I was sitting and they were searching.

Q. Did you see those two pairs of binoculars?

A. No.

Q. Did you ever open the hall closet, Lucille?

A. No, sir, I didn't have no business in the hall closet.

Q. Were you ever there when Mr. Clay came in?

A. Yes, sir, I certainly was.

Q. Were was usually the first place Mr. Clay went every day when he came in?

A. That day?

Q. Every day.

A. Every day when he come. Well, he didn't come every day.

Q. What days did he come?

A. I couldn't tell you that. Sometime he come maybe twice a week or something like that, but he wasn't there every day.

Q. The day he was arrested then, had he been there the day before at all?

A. No, sir, not as I know of. If he was there I didn't see him.

Q. You didn't see him if he was there on the day before he was arrested?

A. No, sir.

Q. How about the week before? Had he been there the week before?

A. Oh, yes, sir.

Q. How many times did he come that week?

A. Now, that I can't remember. I can't remember how many times he had been the week before.

Q. What time of day did he come?

A. Well, sometimes around about 6:00 o'clock in the afternoon.

Q. He would come about 6:00 o'clock in the afternoon when he came?

A. Sometimes he did and sometimes it would be earlier than that.

Q. What time would he come, Lucille?

A. Well, I just told you sometimes it would be six in the afternoon and sometimes earlier.

Q. When you say earlier, what time is that?

A. Well, around 3:00 o'clock or—

Q. Do you remember whether he was there on Friday the week before?

A. No, sir, I don't remember that.

Q. You don't remember whether he was there on Friday, June 17th?

A. No, sir, I don't even remember the day of the month—not back that far.

Q. Do you remember whether he was there on Thursday, June 16th?

A. No, sir, I don't remember that.

Q. Wednesday, June 15th?

A. No, sir, I just couldn't tell you what day it was he was there.

Q. You don't know whether he was there at all the week before?

A. Oh, yes, he was there the week before, but I couldn't tell you the definite day or what day of the month it was because I don't remember.

Q. More than one time during the week?

A. Yes, sir, he was there. He come once or twice a week.

Q. How many times did he come, Lucille, while you were there? The whole time you spent up there in Athens, how many times did Mr. Clay come?

A. Now mister, I couldn't tell you that because I stayed there about 35 days and I couldn't tell you every time he come there.

Q. He came so frequently you just don't remember?

A. No, sir, he didn't come that frequently, but the times he did come I still couldn't tell you how many times he come in the 35 days.

Q. Well, Lucille, would you say that he came twice a week, on an average?

A. On the average about twice a week.

Q. Twice a week?

A. That's right.

Q. And sometimes he would come about six and sometimes about three?

A. That's right, sometimes he come earlier.

Q. What kind of car did he drive?

A. Well, he drove an Oldsmobile and a Chevrolet. Those are the only kinds of cars I seen him drive.

Q. Tell me, does Mr. Clay live there in that house?

A. Well, he stayed there some.

Q. When did he stay there, Lucille, while you were there?

A. Well, he would come in at night, just like I told you, around 6:00 o'clock and that is when he would stay.

Q. And he would just stay all night?

A. He stayed all night.

Q. Did he? That's what I'm asking you?

A. Yes, sir, I guess he did.

Q. Were you staying there at the house?

A. Yes, sir, I was staying there.

Q. Did he eat supper there on the nights he would stay all night?

A. Sometimes he would eat and sometimes I would take him something on a waiter to his room.

Q. Where was his room?

A. In the front bedroom.

Q. The front bedroom?

A. Yes, sir, that's right.

Q. That is all, Lucille.

Re-Direct Examination.

By Mr. Watkins:

Q. Which room did you say Mr. Clay stayed in w..en he did stay?

A. The front bedroom.

Q. Which room did Mrs. Anderson stay in?

A. The next bedroom back there, and I stayed in the next one.

Q. Was that all of the bedrooms in the house?

A. Yes, sir, that is all of the bedrooms, but they had a bed right off from the living room in the dining room, there was a bed in there.

Re-Cross Examination.

By Mr. Thompson:

Q. Four children lived there too, didn't they?

A. Yes, sir.

Q. Where did they sleep?

A. They slept in their beds.

Q. And where were their beds?

A. There beds was in the room with Mrs. Anderson. They had single beds, child beds with the little side on the side. They slept in there. Two boys slept in one and one boy slept in one, and the baby slept in the big bed with Mrs. Anderson.

Q. Did you ever go in the front bedroom at all while you were there?

A. Yes, sir.

Q. That is where the adding machines were?

A. I don't know, sir, because I never did see them.

Q. You never did see them there?

A. No, sir.

Q. But that is where Mr. Clay slept at night?

A. Yes, sir, when he spent the night.

(Witness excused.)

Mr. Watkins:

Recall Lucille Howard back to the stand, please. I overlooked something.

Re-Direct Examination.

By Mr. Watkins:

Q. Lucille, on the occasions that you testified the defendant Clay came to where you all were there in Athens, did he ever bring anything to the house with him when he would come there?

A. Well, sometimes he would bring eggs—sometimes he would bring ice cream, sometimes he would bring fruit for the children, sometimes he would bring candy.

Q. Do you remember any wicker basket that he ever brought there?

A. Yes, sir, he brought baskets with eggs in them, and he bought the eggs from Irma Brackwell, a colored woman on Georgia Industrial Home. They was fresh eggs.

Q. Any other kind of food he brought there?

A. Butter, country butter. He used to bring country butter, about nine or ten half pounds in half pound bags in a big brown bag.

Re-Cross Examination.

By Mr. Thompson:

Q. Lucille, on June 21st, did Mr. Clay bring eggs or ice cream?

A. He brought eggs and ice cream. He brought both of them.

Q. On June 21st, what did he have in the paper bag?

A. I really couldn't tell you.

Q. You don't remember, Lucille, what he had that day?

A. I don't remember June 21st.

Q. Were you up in Athens on June 21st?

A. I really couldn't tell you what day it was because I told you I went there about a week before school closed.

Q. You don't know whether it was eggs or butter he brought on the 21st, or ice cream?

A. I don't even know whether he brought a sack on the 21st, because I don't know what day that was.

(Witness excused.)

(The defense rested.)

Mr. Thompson:
I would like to tender in evidence Govt. Ex. Nos. 25, 26 and 27. 25 is the invoice of the repair work done by Yates Motor Company. 26 is invoice number 2588, and 27 is the customer's statement.

By the Court:
Any objections?

Mr. Gautier:
No objections.

By the Court:
They are admitted.

MR. WILLIAM A. PAIR, being called by the Government, testified as follows:

Direct Examination.

By Mr. Thompson:
Q. Mr. Pair, what was the mileage on the 1955 Oldsmobile that was seized from Mr. Clay on June 21, 1955?
A. Mr. Thompson, I can't give you the exact mileage. I can give you an approximation. It was slightly over 8,000 miles when the car was seized.

Q. Slightly over 8,000 miles?

A. That's correct.

Q. Which bedroom in the house was it that Mrs. Anderson went to lay down in when you were there?

A. When we told Mrs. Anderson to feel free to lie down on the bed she went into the front bedroom of the house and laid down across the bed. She stayed there while we searched the room.

Q. What room was the strong box in?

A. The strong box was found under the bed in the front bedroom.

Q. That is the one with $4,000 in it?

A. That's correct.

Q. That was the front bedroom?

A. That's correct.

Q. Did anybody claim the strong box?

A. That is the one piece of property that was claimed that day. Mrs. Anderson claimed that the box belonged to her and her mother, Mrs. Cravey.

Q. Did she claim any of the other property that was seized?

A. She denied ownership of all of the other property.

(No cross examination, the evidence closed.)

By the Court:

Very well. Members of the jury, you may be excused at this time to come back tomorrow morning at 9:30.

(Jury retired.)

Mr. Watkins:

Your Honor, we want to renew our motion for a judgment of acquittal in behalf of all these defendants.

By the Court:
You may do so at this time.

Mr. Watkins:
We renew our motion for a judgment of acquittal, made at the close of the case for the government, as to each defendant in the case on all counts, without restating the grounds. As to the defendant Mrs. Cotton, respecting count one, the conspiracy count, we still say to Your Honor that there is absolutely no evidence in this case to show her participation in any conspiracy with anyone, that the mere fact that she bought a car and loaned it to Mr. Clay is not sufficient, we think, to submit to the jury the question of her guilt or innocence. And that as to each of the defendants Clay, Mrs. Anderson—and I believe Your Honor has already said you would instruct the jury as to Mr. Alvin Cotton—

By the Court:
That's right.

Mr. Watkins:
—we move that judgments of acquittal be entered at the close of all of the evidence in the case. As to count one, and as to counts two and three of the indictment we insist, Your Honor, that the proof in this case so substantially varies from the allegations in counts two and three that the evidence is wholly insufficient to establish those counts as to the defendant Clay, and we move as to him that you enter a judgment of acquittal as to those two counts. And I want the record clear that we are asking for a judgment of acquittal on all the defendants remaining in this case who are on trial as to count one in-

asmuch as the evidence in the case fails to establish any agreement or conspiracy between either of the parties named as defendants.

(Argument.)

By the Court:

I'll let the jury pass on that, and overrule the motions.

Charge of the Court.

(U.S. v. Clay, et al.)

Members of the jury, counsel on both sides in this case have waived their arguments, which means that the only thing remaining now is that I outline to you the principles of law applicable to the case, and then for you to retire and consider the evidence and the law, and arrive at your verdict. I charge you that you will draw no inference either way from the fact that counsel have waived their summations. Counsel have a right to argue their case to the jury if they want to. They also have a right to waive their arguments, and for reasons which they deem sufficient they have decided to forego their arguments in this case and, as I say, you will draw no inferences either way from the fact that they have not elected to argue their case before you. You will understand that the government contends that these defendants are guilty as charged. You will understand likewise and on the other hand that the defendants contend that they are not guilty of any of the offenses charged in the indictment.

The indictment does not constitute evidence against the defendants. It is merely a written statement of the charges which the government brings against the defendants. It will go out with you to your jury room and you may consider it. You may read it throughout if you like to see in detail and specifically what the charges are. You will see on the back of the indictment pleas of not guilty entered by and on behalf of all of the defendants who appear on trial, and these two writings, the indictment on the one hand and the pleas of not guilty on the other, make up the issue of fact you gentlemen are to pass upon and decide.

You will notice that listed in the caption of the indictment and on the back of it are the defendants Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs. Clara Willis Cravey. Mrs. Cravey is not on trial, so it will not be necessary for you to write a verdict with reference to her. You will return a verdict of not guilty as to the defendant Alvin Q. Cotton, because a verdict of not guilty is being directed by the Court as to the defendant Alvin Q. Cotton. He is named as a defendant in Count One of the indictment. So you are called upon to write a verdict with reference to three defendants only, Will Parks Clay, Mattie Bell Anderson, and Mrs. Mary C. Cotton You will find that all three of those defendants are charged under Count One of the indictment and that Counts Two and Three charge only the defendant Will Parks Clay. So you will consider the question under Count One of the guilt or innocence of the first three defendants named, Will Parks Clay, Mattie Bell Anderson and Mrs. Mary C. Cotton, and under Counts Two and Three you will consider the question of the guilt or

innocence of the defendant Will Parks Clay. We will come back to the indictment a little later to see exactly what the charges are and what the law is with respect to those offenses.

First we will talk a little bit about the problems of proof. You of course will take the law from the Court and apply that law to the facts as you find and believe them to be from the evidence. It is of course upon this evidence alone, when taken in connection with the law now being given you by the Court, that you will find your verdict. You will of course perform that duty calmly and deliberately and dispassionately under your conviction as jurors, laying aside all questions of bias, prejudice and affection, and all other human emotions and resting your verdict entirely upon the evidence and the law. You are the sole judges of the facts in the case and of the weight of the evidence and the credibility of the witnesses.

If the Court should express, or you think has intimated, or should intimate any opinion with reference to the facts in the case, you of course are not bound by it and will disregard any such expressions or any such intimations. It is for you, as the triors of the facts, to weigh and compare and consider all of the testimony of all of the witnesses in the case, including the documentary evidence, and determine where lies the truth of this disputed question of fact.

It is your duty, if you can, to reconcile the testimony of all of the witnesses so that all witnesses shall have spoken the truth. If, however, you are unable to do that, then you may reject the testimony of such witness or such witnesses as you believe to be untrue or mistaken and give credence to the evidence you think most worthy of belief.

Now, in weighing the testimony and the credibility of the witnesses, the jury may take into consideration a number of factors, including the witness' manner and demeanor on the stand, his feelings, interests, prejudice or bias, if any, his means of knowing what he testifies about, the probability or improbability of his testimony, the consistency or inconsistency of his statements, his intelligence or lack of intelligence, the reasonableness or unreasonableness of his testimony, and also his personal credibility in so far as it may legitimately appear from the trial of the case. The number of witnesses on any contested point may be considered, though the truth is not always with the greater number.

Now, in this case, as in all criminal cases, we start out upon the trial with the presumption that the defendants are innocent. The law presumes that they are innocent. That presumption is not evidence in favor of the defendants. It is simply a presumption which casts upon the United States the burden of proving the charges it brings against the defendants, and it is the duty and the burden of the Government to prove these charges beyond a reasonable doubt. But if and when the Government has done so then this presumption of innocence entirely disappears from the case, as it is the evidence that is to control on all questions.

By "a reasonable doubt" the Court does not mean a mere condition of vague conjecture or uncertainty in your mind, nor does a reasonable doubt consist of a mere possibility that a defendant may be innocent, but a reasonable doubt, just as the term implies, is a doubt that is based upon reason, based upon the evidence or lack of evidence in the case. If you have such a doubt as that you should give the

defendants the benefit of the doubt and acquit them, as you should convict only if you believe the defendants guilty beyond a reasonable doubt. A reasonable doubt is an honest, substantial doubt actually existing in a juror's mind and arising either from evidence favorable to a defendant or from want of evidence on behalf of the Government. It is not merely such a doubt as may be conjured up in the mind of one desirous of escaping the responsibility of arriving at a decision or such as may be engendered by pity or sympathy for an accused.

The burden is on the Government in this case to prove that the defendants had knowledge, that is that they wilfully and knowingly agreed to do the things charged in Count One of the indictment, Count One being the conspiracy count, and that the defendant Will Parks Clay knowingly, willfully and feloniously attempted to evade and defeat the payment of taxes as alleged in Counts Two and Three. Now, of course, knowledge of that kind is not something that you can see with the eye or touch with the fingers. It is seldom possible to prove it by direct evidence. You cannot look into a person's mind and determine what existed at a given time, especially in the past. Generally, it is necessary to show knowledge by acts and conduct. You usually may acquire knowledge from what you see with the eye, or feel with the fingers, or hear with the ear, or sense by smell with the nose, or sense by taste with the tongue, but generally you can apprise the state of mind of another person only from a consideration of his conduct. In other words, you should take into consideration in your deliberations here, not only the direct evidence in the case but all of the facts relating to the defendants' connection with the transaction so far as they

may have been disclosed by the testimony, or the reasonable import to be deduced therefrom. In other words, it may be a matter largely of circumstantial evidence on the question of intent and knowledge or motive. Circumstantial evidence is sometimes as reliable as direct evidence, and in some circumstances might be even more reliable.

Direct evidence is evidence given by a witness who testifies of his own knowledge to an ultimate fact. That is to say, if a witness sees something happen or hears something said by a defendant, or gains knowledge of it by exercise of some one or more of his five physical senses, and testifies to it, that is called direct evidence. Some ultimate facts, however, are not capable or proof by direct evidence and may be proved just as effectually by circumstantial evidence.

Circumstantial evidence is that evidence which tends to prove a disputed fact by the proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists which is sought to be established. The rule as to circumstantial evidence is that the circumstances proved by the evidence must be sufficiently strong to exclude every other reasonable hypothesis except the guilt of the accused. Circumstantial evidence is legal evidence and a jury must act upon it as if it were direct, when it is satisfactory beyond a reasonable doubt.

I charge you that if two inferences may be drawn equally logically by the jury from testimony adduced at the trial, one of guilt and the other of innocence, the jury should accept only the inference of innocence.

In this case there has been introduced in behalf of the defendant Mrs. Cotton what is known as character evidence. That evidence is properly before the jury,

not as a reason to acquit the defendant Mrs. Cotton, if you think she is guilty, but to be considered along with all the other testimony in the case in determining whether you think she is guilty or not. Good character is a positive, substantive fact and may of itself be sufficient to generate in the minds of the jury a reasonable doubt as to the guilt of a defendant so as to require an acquittal of such defendant. On the other hand if this jury should think from all the testimony together that notwithstanding the evidence of good character the defendant Mrs. Cotton nevertheless did what she is charged with doing, then you ought to convict her. In other words, a jury would not be authorized to acquit because of good character if the jury thinks the defendant actually committed the offense which she is charged with committing. As I said, the character evidence is to be considered along with all the other testimony in the case in determining whether the defendant did what she is actually charged with doing.

Now, let's look at the indictment, and for convenience let's discuss, first, Counts Two and Three which name as a defendant only Will Parks Clay, and which allege what the law refers to as substantive offenses rather than a conspiracy to commit an offense. These counts are not long and I am going to read them to you. Count Two says: "That heretofore, on or about July 1, 1954, and continuously thereafter to and including June 30, 1955, Will Parks Clay, in the Macon Division of the Middle District of Georgia, and within the jurisdiction of this Court, then engaged in the business of conducting a lottery for profit, commonly known and called 'Numbers' and 'Bug', and of accepting wagers, and did knowingly, wilfully, and feloniously attempt to evade and defeat the payment

of the wagering occupational tax prescribed for such business and required to be paid by him during and for such period aforesaid, in accordance with the provisions of Section 4401, 4402, 4404, 4421 and 4411 of the Internal Revenue Code, contrary to the form of the Statute . . .", and so forth. Now, Count Three is somewhat similar and yet different in a certain respect and reads as follows: "That heretofore, during the month of June, 1955, Will Parks Clay, in the same division and jurisdiction, then engaged in the business of conducting a lottery for profit, commonly known and called 'Numbers' and 'Bug', and of accepting wagers, during which month he received in wagers in the conduct of such lottery and wagering business the sum of $16,213.80, did knowingly, wilfully and feloniously attempt to evade and defeat the payment of the excise tax on such wagers in the sum of $1,612.38 imposed thereupon, as prescribed therefor, and required to be paid by him on or before July 31, 1955, in accordance with the provisions of Section 4401 of the Internal Revenue Code . . ."

Now, I'll read to you the appropriate sections of the Code dealing with the offenses alleged in the indictment. Section 26-4401 read as follows: "There shall be imposed on wagers, as defined in section 4421 . . .", and I'll read that in a moment, "an excise tax equal to 10 percent of the amount thereof. In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected

shall be excluded. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery."

Now, Section 4421, referred to in that section, reads in pertinent part as follows: "For purposes of this chapter, the term 'wager' means any wager placed in a lottery conducted for profit. The term 'lottery' includes the numbers game, policy, and similar types of wagering. The term does not include any game of a type in which usually the wagers are placed, the winners are determined, and the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game."

Now, Section 4411 deals with the occupational tax. The Statutes just read deal, as you see, with an excise tax of 10 percent. 4411 says: "There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401", which I have already read, "or who is engaged in receiving wagers for or on behalf of any person liable."

4412 deals with registration and says: "Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district, his name and place of residence; if he is liable for tax under subchapter A", that is the 10 percent excise tax, "each place of business where the activity which makes him so liable is carried on and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and if he is engaged in receiving wagers for or on behalf of any person liable for

tax under subchapter A", that is the 10 percent excise tax, "the name and place of residence of each such person. Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and place of residence of the several persons constituting the firm or company shall be registered. In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter."

26-4403 says: "Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a)."

26-4901 provides: "No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411", which I have read, "until he has paid the special tax therefor. All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. All special taxes imposed by law shall be paid by stamps denoting the tax."

Then Section 6806 provides: "Every person engaged in any business, a vocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of said special tax. Every person liable for special tax under section 4411 shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on

his person, and exhibit it, upon request, to any officer or employee of the Treasury Department."

Then another section applicable here is Section 7201, and it reads in pertinent part as follows: "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony . . .". And that is the statute under which Counts Two and Three are returned and it is the statute describing the substantive offense which Count One charges a conspiracy or an agreement to commit.

To establish its case under Counts Two and Three, and One, the Government must prove beyond a reasonable doubt certain things. Under Count Two dealing with the occupational tax, the Government must prove beyond a reasonable doubt both of the following two elements: One, that the defendant Will Parks Clay owed and was due to pay the occupational tax, and second, that he wilfully attempted to evade and defeat such tax. To establish its case under Count Three dealing with the excise tax, the Government must prove beyond a reasonable doubt both of the following two elements: One, that substantial excise tax was due and owing from the defendant Will Parks Clay, and second, that he wilfully attempted to evade and defeat such tax. The gist of the offenses charged in Counts Two and Three is a wilful attempt on the part of Clay to evade or defeat the tax imposed by law. The word "attempt" as used in law and in this indictment involves two things; first, an intent to evade or defeat the tax, and second, some affirmative act done in furtherance of such intent. The word "attempt" with reference to Count Two, and the occupational tax, contemplates that the defendant Clay had knowledge and understanding that during the

year, from July 1, '54 to June 30, '55, he was engaged in the business of conducting a lottery for profit and of accepting wagers, and that he was due to pay an occupational tax and that he attempted to evade or defeat such tax by purposely failing to register or otherwise. The word "attempt" with reference to Count Three and the excise tax contemplates that the defendant Clay had knowledge and understanding that during the month of June, 1955, he was engaged in the business of conducting a lottery for profit and of accepting wagers, and that during said month he received in wagers, in the conduct of such wagering and lottery business, a substantial sum, and that he owed and was due to pay an excise tax in a substantial sum and amount upon such receipts, and that he attempted to evade or defeat the tax thereon, or a substantial portion thereof by purposely failing to report such receipts and that he knew it was his duty to report such receipts and to pay such tax. The gist of these two offenses charged in Counts Two and Three and charged in Count One as the objective of the alleged conspiracy consists in wilfully attempting to escape the tax. The attempt to evade or defeat the tax must be a wilful attempt. That is to say, it must be made with the intent to keep from the Government a tax imposed by the laws which it was the duty of the defendant Will Parks Clay to pay to the Government. The attempt must be wilful, that is intentionally done with the intent that the Government should be defrauded of the tax due from the defendant.

The word "wilful", as used in these statutes, means with knowledge of one's obligation to pay the tax due, and with intent to defraud the Government of that tax.

The question of intent is a matter for you as jurors to determine, and as intent is a state of mind and it is not possible to look into one's mind to see what went on, the only way you have of arriving at the intent of a defendant is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what the intent of the defendant was at the time in question. Thus direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences may arise from a combination of acts although each act standing by itself may seem unimportant. These are questions of fact to be determined from all the circumstances. In determining what the defendant's intent was, you may take into consideration any evidence, if there is any evidence, of the concealment of facts by a defendant, or by the defendant in any particular case. You are instructed that a man may not shut his eyes to obvious facts and say he does not know. He may not close his observation and knowledge of things that are out in the open and obvious to him and say: "I have no knowledge of those facts". If a man honestly believes that he has paid all the taxes he owes, or that he doesn't owe any tax and therefore was under no duty to pay, he is not guilty of criminal evasion, but if he acts without reasonable ground for belief that his conduct was lawful, it is for you to decide whether he was acting in good faith or whether he intended to evade the tax. This question of intent is a question you must determine for yourselves from a consideration of all of the evidence.

On the question of intent to evade taxes there are certain matters which you may consider as pointing

to such intent if you find they exist in this case. These are general illustrations: Handling one's affairs to avoid the making of records usual in transactions of the kind, and any affirmative conduct, the likelihood of which would be to mislead or conceal. I give you these instances simply to illustrate the type of conduct from which you may infer the intent to evade taxes, should you find that such circumstances existed in this case. Whether or not any of them existed here is solely for determination by the jury, and if the tax evasion motive plays any part in such conduct, the offense may be made out even though the conduct I have mentioned, if it existed, might also serve some other purpose.

It is not necessary that the Government prove an evasion of all of the taxes charged in the indictment. It is sufficient if any substantial portion of a tax was attempted to be evaded and evaded as charged in the indictment.

Now, let's discuss briefly Count One of the indictment. It is not long and I'll take time to read it: "The Grand Jury Charges: From on or about the 1st day of July, 1954, and continuously thereafter up to and including the 30th day of June, 1955, within the Macon Division of the United States District Court for the Middle District of Georgia and within the jurisdiction of this Court, Will Parks Clay, Mattie Bell Anderson, Mrs. Mary C. Cotton, Alvin Q. Cotton and Mrs. Clara Willis Cravey, hereinafter referred to as the defendants, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together and with each other, and with Obie Durham, who is named herein as a co-conspirator but not as a defendant, and with divers other persons to the Grand Jurors unknown, to commit offenses against the United States, to wit:

"To engage in the business of conducting a lottery for profit, commonly known and called 'Numbers' and 'Bug', and of accepting wagers and to knowingly, wilfully and feloniously attempt to evade and defeat the payment of the Wagering Occupational Tax prescribed for such business and required to be paid by them during and for the taxable period ending June 30, 1955, in accordance with the provisions of Section 3290 of the Internal Revenue Code," and other sections referred to, "and while engaged in such business, as aforesaid, to knowingly, wilfully and feloniously attempt to evade and defeat the payment of the Federal Excise Tax imposed on wagers and required to be paid for the month of July, 1954, and for each month thereafter, in accordance with the provisions of," section so and so of the Code, and then "The Grand Jury further presents that the defendants and the co-conspirators herein referred to, in furtherance of said conspiracy and in order to effect the objective thereof, did, at the time and places hereinafter stated, commit the following overt acts, to-wit:", and then the indictment sets out eleven overt acts, which are alleged to have been committed by one or more of the defendants in furtherance of said alleged conspiracy and in order to effect the objectives thereof.

A word or two as to a conspiracy, and what it is. A conspiracy to commit a crime is a distinct offense from the crime itself which is the object of the conspiracy. Indeed, there may be guilt of a conspiracy even though its criminal objective is never accomplished. Likewise, there may be guilt of a conspiracy even though its criminal objective is fully accomplished. From the point of view of the law, there is danger to the public when two or more persons conspire to do something that is unlawful. Because

of the aggregation of numbers, the intent to subvert the law assumes formidable proportions and involves a preparation for further criminal practices that jeopardizes the public safety, and the jeopardy is the greater because a conspiracy is almost always characterized by secrecy rendering its detection difficult.

A conspiracy may be defined as a combination of two or more persons to accomplish a criminal or unlawful purpose by concerted action. It is a partnership in a criminal purpose, with wilful and knowing participation toward the common end, and the gist of the crime is the confederation or combination of minds. A conspiracy therefore is constituted by agreement between or among conspirators. The agreement may, of course, take the form of an expressed understanding. A conspiracy may also be constituted without expressed understanding or formal agreement. A Conspiratorial agreement may be found to exist if there be concert of action, all of the parties working together understandingly with a single design for the accomplishment of a common unlawful purpose. Accordingly, a conspiracy may be proved by circumstantial evidence and, as I said, circumstantial evidence consists of facts proved, such as conduct or declaration or physical facts from which the jury may infer, by a process of reasoning, other facts concerning a defendant's alleged connection with a crime.

Inasmuch as conspirators may not be expected to proclaim their intentions on the public highways, but to cover their plans with the utmost secrecy, they must necessarily be judged by their acts. You may judge a man's purpose and awareness and knowledge by what he does under the axiom that actions speak louder than words. Examine the conduct of the de-

fendants as disclosed by the evidence in the light of all of the circumstances and draw those inferences and only those inferences, which seem reasonable in view of your knowledge of, and experience with, people and events. If these inferences are sufficiently compelling to satisfy you beyond a reasonable doubt of the defendant's wilful and knowing participation in the conspiracy alleged in the indictment, then a conviction may rest entirely on circumstantial evidence, otherwise not.

In order to be a conspirator it is not necessary for a defendant to have participated in the conception of the criminal design at the outset. Anyone who comes in later, with knowledge of the aims and purposes of the conspiracy, and who co-operates in the common efforts to obtain the unlawful results becomes a party to it even though his part may be a subordinate one, or is to be executed at a remote distance from the other conspirators. All who participate in any phase of the conspiracy with actual knowledge of it are liable for the acts and conduct of other members of that conspiracy to effect its object.

A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was the agent of the others at sometime during the life of the conspiracy remains an agent during all of its existence, except that a conspirator has the right to withdraw from its execution. However, it requires affirmative and effective acts to withdraw and terminate liability. It is a principle of law that a condition once shown to exist continues until a different situation is shown. It is unnecessary that all the conspirators be acquainted with each other or with one another. Though one conspirator

may not know all of the others, if he knows that others are acting together to violate the law and he intentionally co-operates to further the object of the conspiracy, he thereby becomes a party to it.

I charge you that a person who has no knowledge of a conspiracy cannot be a conspirator. That is to say if you believe from the evidence in this case that the defendants Mrs. Mary C. Cotton and Mattie Bell Anderson had no knowledge that a conspiracy between the defendant Will Parks Clay and some other person, either Mary C. Cotton and/or Mattie Bell Anderson or anyone else, existed, at the times you have heard evidence about in this case, then you would not be authorized to convict the defendants Mary C. Cotton or Mattie Bell Anderson.

I charge you further, Gentlemen of the Jury, that if you believe from the evidence in this case that a conspiracy or agreement between some of the defendants named in Count One of this indictment existed but that the defendant Mrs. Mary C. Cotton had no knowledge of such conspiracy and she merely loaned her automobile to the defendant Clay, such fact would not authorize you to convict the defendant Mrs. Mary C. Cotton.

I charge you also, however, that if Mrs. Cotton knows that others are acting together to violate the law and she intentionally co-operates to further the object of the conspiracy, she thereby becomes a party to it.

The corpus delicti or body of the crime of conspiracy is complete when an overt act to effect the objects of the conspiracy is performed by at least one of the conspirators. The indictment alleges in this case, as I said, eleven overt acts. An overt act is an act performed to effect the object of a conspiracy,

and the overt act need be neither a criminal act nor need it be the very crime that is the object of the conspiracy. It may in itself be an entirely harmless act; that is the overt act may be. But it must accompany or follow the agreement and must be done in furtherance of its object. Though the Government has alleged eleven overt acts it is necessary only that one be proved in order to complete the proof of conspiracy. It is necessary that one of them, at least one, be proved as alleged in the indictment.

It is not necessary to conviction that all conspirators should join in the overt act, for each conspirator is the agent for every other member of the conspiracy with him, and the act of one in pursuance of the common purpose is deemed to be the act of all and to make all the members of one conspiracy responsible for that act. Since one joining a criminal conspiracy becomes equally guilty as those that were in it at its inception he is equally accountable for any overt act performed by other members of the conspiracy prior to his membership. Of course, in order for a late comer into a conspiracy to be chargeable with statements and/or acs previously done by other members of the conspiracy in execution of the conspiracy, he must know of the existence of the conspiracy and be aware of its purpose.

In order to find the defendants guilty under Count One you must be satisfied beyond a reasonable doubt from your consideration of the evidence that they knowingly and wilfully participated in an agreement, whether expressed or unexpressed, to do the things charged in Count One, and that at least one overt act as charged in the indictment was performed by one or more of the parties to that agreement in furtherance of that conspiracy.

There is evidence in this case upon which, if you believe it, and if you deem that you should draw such inferences therefrom, you may find all or any one or more of the defendants guilty under Count One of the indictment. That is to say the defendants Will Parks Clay, Mattie Bell Anderson and Mrs. Mary C. Cotton, and upon which you may find the defendant Will Parks Clay guilty under Counts Two and Three; and of course, you may return a verdict of not guilty for all of the defendants under Count One and for Will Parks Clay, the sole defendant, under Counts Two and Three. And you should return a verdict of guilty if you find that the Government has proved its case beyond a reasonable doubt, and in accordance with the rules of circumstantial evidence which I have given you in charge. And, of course, you should find a verdict of not guilty in each instance and on each count if you conclude upon the evidence that the Government has not successfully carried the burden imposed upon it by law, as I have instructed you. I charge you that the question of possible punishment of a defendant in the event of conviction is of no consequence to a jury, and should not in any sense enter into or influence a jury's deliberations. The duty of imposing sentence rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendants on the basis of the evidence.

Finally, I charge you that if in these instructions any rule or direction or idea be stated in varying ways, no emphasis thereon is intended by me and none must be inferred by you. For that reason you are not to single out any certain sentence or individual point or instruction and ignore the others, but you are to consider all of the instructions and as a whole, and you are to regard each in the light of all the others.

You may write your verdict on the back of the indictment if you find room there for it. If you do not find sufficient room there you may turn over and write it on the inside of the back cover. Inasmuch as you are trying three defendants under Count One, and only the defendant Will Parks Clay under Counts Two and Three, it will be necessary for you to be specific in the wording of your verdict and let your verdict show what your decision is with respect to each of the three defendants and with respect to each of the three counts. In other words,—and if I now give you one or two samples you will pay no attention to which sample I name first, whether it is guilty or not guilty. I am merely trying to illustrate something to you. You may find a verdict like this: We, the jury, find the defendants Will Parks Clay, Mattie Bell Anderson, and Mrs. Mary C. Cotton guilty on Count One and the defendant Will Parks Clay guilty on Count One—I meant Count Two and Count Three. You may find on the other hand: We, the jury, find the defendants not guilty, period. If you did that that would cover all defendants and cover all counts. You may find one or more of the defendants guilty under Count One, and acquit the others under Count One. Of course, in a conspiracy charge, as I have stated, there must be two or more members of the conspiracy. A person cannot conspire with himself. But this indictment charges that these five people named conspired with themselves and with Obie Durham, and with divers other persons to the Grand Jurors unknown, so under this indictment you could find a verdict, if you think you should under the evidence, against only one of the named three defendants on trial, Clay, Anderson and Mrs. Cotton, under Count One; or you could find two of the three de-

fendants named, Clay, Mrs. Mattie Bell Anderson or Mrs. Mary C. Cotton guilty under Count One and the others not guilty; or, as I said, you may find all three of the defendants Clay, Mattie Bell Anderson and Mrs. Mary C. Cotton guilty under Count One. Of course, Counts Two and Three name only one defendant. Now, I trust I have made that clear. In other words, with respect to Count One let your verdict show whether any defendant is guilty and if so name the defendant or the defendants. And if you find any of the defendants not guilty under Count One, name the defendant or defendants found not guilty under Count One, so there can't be any confusion about it. Name also specifically what you do under Counts Two and Three with respect to the defendant Will Parks Clay.

Now members of the jury, I believe that covers the points of law applicable to this case in so far as I see them and I am going to let the Marshal take you to your jury room now. Do not begin your deliberations until you hear from him further. If there should be any further instructions I will call you back in just a minute and give them to you. If there should not be any further instructions then the Marshal will, in a few moments, bring to you the indictment in the case and the documentary evidence. You may retire at this time.

(Jury retired.)

By the Court:

I will hear first from the Government.

Mr. Thompson:

If the Court please, the Government has no exceptions.

Mr. Watkins:

I believe we do have one or two, Your Honor. We except to the charge of the Court, that portion of it, which dealt with the discussion of the statute relating to registration. We do not think that a failure to register under that part of the Revenue Code is applicable to this case inasmuch as there has been no charge of a failure to register and no evidence of such a failure and we think it was probably misleading and prejudicial even to read the statute, the statutory requirements respecting registration under the occupational tax provisions of the Code.

We further except to that portion of Your Honor's charge in which it was stated to the jury that it could consider, in determining the question of whether or not the defendants wilfully attempted to evade and defeat the payment of the tax, their failure to keep records. Of course, I am not saying that I remember everything in the case, but I have no recollection of any evidence in this case which showed that these defendants or any of them failed to keep any required records. Looks like there are a lot of records in evidence.

Additionally, Your Honor, we except to that portion of the charge relating specifically to Count Three of the indictment which alleges a wilful attempt to evade and defeat the payment of about sixteen hundred and some odd dollars excise taxes, where Your Honor said that it was not necessary, in substance, for the Government to prove the nonpayment of all of the taxes alleged to have been due and owing so long as it proved a wilful attempt to evade and defeat the payment of a substantial part thereof. Now as a matter of law we take the position that the nearest approach that this evidence makes toward

proof of liability for excise taxes in any specified amount is the etstimony of the witness Lewis which showed that according to the tickets taken from Clay when he was arrested they indicated that wagers amounting to $732.92 had been placed, and that the excise tax on that total amount was $73.29. We say as a matter of law that $73.29 is not a substantial part of more than $1600, which is alleged in Count Three of the indictment, and that the Government just wholly failed to substantiate its allegation by any proof in this case. Moreover, there isn't any evidence here that wagers amounting to $732.92 were received by any defendant in this case and as we understand it those wagers, to be taxable under the excise tax provisions of the Code, have got to be received by the operator. He didn't have any money with him except, I believe, some pennies amounting to about $9:00 and some odd money in checks—I don't believe that is even in evidence—yes it's in evidence, pennies—

Mr. Thompson:

Checks and money on his person.

Mr. Watkins:

But nothing like $732.90; so there is no basis for evidence, basis by the jury, that he should have paid $73.29 even, and even if it were we would still say, as a matter of law, that that is not a substantial part within the meaning of the law of the amount alleged to have been owed and wilfully evaded by the defendant Clay. It was over $1600 I believe in Count Three.

Mr. Gautier:

If Your Honor please, we have one other exception that has to be rather general in nature. Because of the length of the charge we take the position that this charge as a whole was argumentative in favor of the Government, and is prejudicial for the defendant, and for that reason I would have to go through the entire charge in order to point out all of the places, because we contend that it began at the beginning and ended when you finished the charge.

By the Court:

Anything further?

Mr. Gautier:

That is all.

Mr. Watkins:

One thing particularly, Your Honor, in that regard, in charging the law on conspiracy, where Your Honor states—and these are, I am fully aware, from the general language used by the Supreme Court, or at least some Judges on the Supreme Court—that when more than one person gets together to commit a crime that the public welfare is thereby endangered more than just if one person. We except to that part of Your Honor's charge because we think there is nothing in the evidence in this case to show or to authorize a jury to feel or find, from this evidence, that the public was in greater danger because maybe there were two people involved in this situation, rather than just one, and we think for that reason that that language is prejudicial and harmful to these defendants.

Mr. Thompson:

If the Court please, might I make one observation or comment? As defense counsel stated they couldn't remember all of the charge, neither can I, but some where in your charge you made a reference to purposely failing to register or otherwise, I wonder if the Court could recall just exactly what that reference was.

By the Court:

I think so.

Mr. Thompson:

I would like sir, if I might, to hear it again so I could see if I feel that there is any merit to the contention with regard to that statement.

Mr. Watkins:

That was in connection as I recall of what you might consider in determining whether there was a wilful attempt to evade.

By the Court:

That's right. I charged in substance as follows: The word "attempt" with reference to Count Two and the occupational tax contemplates that the defendant Clay had knowledge and understanding that during the year beginning July 1, '54 and ending June 30, '55, he was engaged in the business of conducting a lottery for profit and of accepting wagers, and that he was due to pay an occupational tax and that he attempted to evade or defeat such tax by purposely failing to register or otherwise.

Mr. Thompson:

If the Court please, I would like to ask the Court if it would to elucidate a little further on that with the jury, for this reason, that in the other Clay case, that was reversed by the Fifth Circuit, the Court held that a mere failure to register, a wilful failure to register would not be a violation, and the Court of course is familiar with the Spies case which holds that the failure to file an income tax return or the failure to pay a tax is not a violation. So perhaps it would not be, or perhaps it would be questionable, I'll put it that way, as to whether or not the statement "an attempt to evade" by merely failing to register would constitute a violation, or at least would take this case out of the other Clay cases. What I am trying to say is that as I understand the other Clay case, a mere failure to register would not constitute a violation, even though it was wilful, failure to register being a misdemeanor and a wilful attempt to evade being a felony. Actually, I think that that is covered in the general charge of the Court and that is the reason I made no observation of it prior to now, but since defense counsel have pinpointed it, I would prefer that that be recharged to the jury so that they could not find the defendant guilty for merely failing to register.

By the Court:

Well, of course, I have charged them repeatedly that they must find that the defendant wilfully and knowingly attempted to evade the payment of taxes which he knew he was due to pay.

Mr. Thompson:

Yes, sir, and I am satisfied in my own mind that the general charge on that is correct. And you stated

in connection with the registration that it must be an attempt to evade by not registering. I would be willing to argue that that is correct, sir.

By the Court:

Well, prepare your request as you think it should be given, and I'll consider it.

Mr. Thompson:

Yes, sir.

(After writing out request.)

Mr. Thompson:

If the Court please, I am extremely anxious in this case, or any other case, that there be no reversible error and that the defendant gets a fair trial and I made this observation, the one I have made, out of an abundance of caution. I repeat that I feel the charge as given sufficiently states the offense. What I have in mind is along these lines and I will read what I have written here. I think this charge would take it out of the other Clay case and out of the Spies case with which the Court is familiar: That is, I charge you that the mere failure to register and to pay the wagering occupational tax, although wilful, would not of itself constitute the offense charged in the indictment. In addition to this there must be some affirmative act indicating a wilful attempt to evade the payment of the tax.

I submit that to opposing counsel. Of course, I know I can't bind them in any way, if they know what I am attempting to say. I submit that as overcoming the objections made in that point. I would like for them to read it and see if they have any suggestions for the Court, please. (Handing it to Mr. Watkins.)

Mr. Watkins:

I would rather not say one way or the other about that. I repeat, however, that I don't think the question of registration is involved in this case at all. Your Honor well knows that the law must be adjusted to the facts in the case. If the Government has failed to prove its case, why, I don't think it would be mended by the Court's charge.

Mr. Thompson:

I don't mean to argue that point at all because I am satisfied we can show failure to register as being one of the evasionary tactics—and I submit that—now I think Mr. Evans has the other Clay case here.

By the Court:

Well, do you want to withdraw it and submit it again in a moment.

Mr. Thompson:

I think, sir, that would satisfy any objections to the charge as far as the Government is concerned, wording substantially to that effect. Mr. Evans would like to see that.

Mr. Evans:

Judge, I think Mr. Thompson has made the Government's position clear. We think the charge as it stands is all right taking the full context of it, but since the point has been immediately made it might be some remote possibility of a misconstruction and I think—

By the Court:

You think this cures that remote possibility?

Mr. Evans:

I think that would be unquestionably curative, if there is a remote possibility of error.

Mr. Thompson:

I wonder if the Court would like to see the Clay case.

By the Court:

Yes, I remember the Clay case, of course, it was not my case. Mr. Clerk, you may prepare a separate verdict of not guilty as to Alvin Q. Cotton and that will cover that.

The Clerk:

Yes, sir.

By the Court:

Call the jury back. (Jury returned to the box.) One or two matters have been called to my attention, members of the jury. I charged you that I would direct a verdict of not guilty as to Alvin Q. Cotton, so to get that out of the way, I have prepared a verdict, separate verdict of not guilty as to that particular defendant, so when you go to your room you can let your foreman sign that verdict and that will remove from the case Alvin Q. Cotton and you will not have to consider him any further.

Also, I charged you in substance that the word "attempt" with reference to Count Two and the occupational tax contemplates that the defendant Clay had knowledge and understanding that during the year

beginning July 1, '54 and ending June 30, '55, he was engaged in the business of conducting a lottery for profit and of accepting wagers and that he was due to pay an occupational tax and that he attempted to evade or defeat such tax, and then I added "by purposely failing to register or otherwise". I had already charged you that the word "attempt" as used in this law involves two things, an intent to evade or defeat the tax and some affirmative act done in furtherance of such intent. I now charge you additionally as follows: That the mere failure to register and to pay the wagering occupational tax, although wilful, would not of itself constitute the offense charged in the indictment. In addition to this if you find that he failed to register either wilfully or otherwise, there must be some affirmative act indicating to your satisfaction and beyond a reasonable doubt, a wilful attempt to evade the payment of the taxes due.

You may now retire and the Marshal will bring to you the indictment and the documentary evidence.

(Jury retired.)

By the Court:

Close the door and lets give defendants' counsel an additional opportunity to make any objections in view of the additional charge I have given, or otherwise.

Mr. Watkins:

Your Honor, I don't think we have any additional exceptions to what Your Honor has charged, with this exception: We do not think it applies to this case because there is simply absent any evidence of a failure to register.

By the Court:

Well, I want you to have full opportunity to get all of your contentions in the record.

Mr. Watkins:

Yes, sir.

By the Court:

All right, are they in the record now?

Mr. Watkins:

We do not, of course, concede that the recharge cures what we had in mind when we initially excepted to that portion of the charge.

By the Court:

Certainly not. You fully reserve all of your previous exceptions. Are there any others?

Mr. Watkins:

No, sir.

Mr. Thompson:

The Government has none.

Filed Jan. 18, 1957.

MOTION FOR NEW TRIAL.

(Title Omitted.)

The defendants, Will Parks Clay, Mattie Bell Anderson and Mrs. Mary C. Cotton, move the Court to grant them a new trial for the following reasons:

1.

The Court erred in denying the motion made by Will Parks Clay and Mattie Bell Anderson to suppress evidence seized by Federal Officers from the person of Will Parks Clay, the vehicle driven by Will Parks Clay and from the house known as 140 Morton Avenue, Athens, Georgia, on June 21, 1955.

2.

The Court erred in denying the motion for acquittal made by each of the movants at the conclusion of the evidence offered by the Government.

3.

The Court erred in denying the motion for acquittal made by each of the movants at the conclusion of all the evidence.

4.

The verdict as to each of the movants is contrary to the weight of the evidence.

5.

The verdict of guilty as to each of the movants is not supported by substantial evidence.

6.

The Court erred in admitting testimony relating to the property seized from the person of Will Parks Clay, the automobile driven by Will Parks Clay and property located at 140 Morton Avenue, Athens, Georgia, seized by Government agents on June 21, 1955.

7.

The Court erred in charging the jury in an argumentative fashion and in instructing the jury that the evidence was sufficient to convict each of the movants.

Wherefore, movants pray that they be granted a new trial in this case.

PAUL M. CONAWAY, T. REESE WATKINS,
JACOBS & GAUTIER,
Of Counsel for Movants.

I, Robert Thompson, Assistant United States Attorney, acknowledge receipt of a copy of the foregoing Motion for New Trial made on behalf of movants; all further service of said motion being hereby waived.

This 24th day of October, 1956.

ROBERT B. THOMPSON,
Assistant U.S. Attorney.

Filed Oct. 24, 1956.

Order.

The foregoing motion for new trial having been read and considered and argument of Counsel having been heard, the same is hereby overruled.

So Ordered this 2nd day of November, 1956.

W. A. BOOTLE,
United States Judge.

Filed Nov. 2, 1956.

NOTICE OF APPEAL.

Filed at 1:50 A.M. Nov. 2, 1956. Betty M. Jones, Deputy Clerk, U. S. District Court.

In the District Court of the United States for the Middle District of Georgia, Macon Division.

United States of America,

vs. Indictment No. 7258.

Will Parks Clay, Mattie Bell Anderson, Mrs. Mary Cotton: Alvin Q. Cotton and Mrs. Clara Willis Cravey.

Name and Address of Appellants:
Will Parks Clay, Macon, Georgia.
Mattie Bell Anderson, Macon, Ga.

Name and Address of Appellants' Attorneys:
T. Arnold Jacobs, Persons Building, Macon, Georgia.
Jack J. Gautier, Persons Building, Macon, Georgia.
Paul M. Conaway, Washington Block, Macon, Georgia.
T. Reese Watkins, Persons Building, Macon, Georgia.

Offense:
(1) Will Parks Clay, 18 USCA 371 in connection with 26 USCA, 7201 and 26 USCA 7201. (Conspiracy to evade and defeat wagering occupational tax and Federal excise tax imposed on wagers; also substantive offenses.)

(2) Mattie Bell Anderson 18 USCA, 371 in connection with 26 USCA, 7201. (Conspiracy to evade and defeat wagering occupational tax and Federal excise tax on wagers.)

Statement of Judgment of Conviction with Date and Sentences:

As to Appellant, Will Parks Clay: Judgment of conviction entered October 26, 1956 and sentence of Court entered on same date of four years imprisonment on 3 counts of indictment to run concurrently plus fine totalling $12,000.00.

As to Appellant, Mattie Bell Anderson: Judgment of conviction entered October 26, 1956 and sentence of Court entered on same date of 18 months imprisonment.

Each of the appellants is presently at liberty on bail.

We, the above named appellants, Will Parks Clay, Mrs. Mattie Bell Anderson, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above stated judgments.

This 5th day of November, 1956.

T. ARNOLD JACOBS,
(T. Arnold Jacobs),

P. O. Address:
Persons Building,
Macon, Georgia.

JACK J. GAUTIER,
(Jack J. Gautier),

P. O. Address:
Persons Building,
Macon, Georgia.

PAUL M. CONAWAY,
(Paul M. Conaway),

P. O. Address:
Washington Block,
Macon, Georgia.

T. REESE WATKINS,
(T. Reese Watkins).

P. O. Address:
Persons Building,
Macon, Georgia.

Filed—Nov. 2, 1956.

ORDER EXTENDING TIME FOR FILING AND DOCKETING RECORD ON APPEAL.

(Title Omitted.)

It appearing to the Court that notice of appeal was filed by the defendants, Will Parks Clay and Mattie Bell Anderson, in this case on November 5, 1956, and it further appearing to the Court that the record upon the trial of the case and the record upon the hearing of defendants' motions to suppress certain evidence is comparatively lengthy and that on account of other pressing and prior matters, the reporter will be unavoidably delayed for a considerable length of time in transcribing the record of such trial and hearing.

It is therefore upon motion of counsel for the defendants ordered and adjudged that the time for filing and docketing the record on appeal in this case be and it is hereby extended to February 3, 1957.

So ordered and adjudged this 28 day of November, 1956.

(S.) W. A. BOOTLE,
Judge, United States District Court for the Middle District of Georgia.

Filed Nov. 29, 1956.

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANTS ON THIS APPEAL.

(Title Omitted.)

On this appeal, Appellants intend to rely on the following points:

1. As to Appellant, Will Parks Clay, the District Court erred in overruling his motion for return of seized property, and suppression of evidence filed by said Appellant on April 14, 1956, which evidence was taken from the person of Appellant, Will Parks Clay, and from his automobile in Athens, Georgia, by Federal officers under circumstances which were violative of his rights under the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable arrests, searches and seizures.

2. As to both Appellants, the Court erred in admitting in evidence the property seized by Federal officers from the premises known as 140 Morton Avenue, Athens, Georgia, and in refusing to suppress as evidence such seized property, as prayed by these Appellants in their motion to suppress the same filed on April 14, 1956.

3. The evidence was insufficient to authorize the conviction of these Appellants.

4. The Court erred in refusing to grant these Appellants' motions for judgment of acquittal.

5. As to each Appellant, the District Court erred in admitting in evidence upon the trial of this case the physical evidence seized from the automobile of Will Parks Clay, and from his person, and from the premises known as 140 Morton Avenue, Athens, Georgia, over the objection of such Appellants.

This 24th day of January, 1957.

T. A. JACOBS,
(T. A. Jacobs),
PAUL M. CONAWAY,
(Paul M. Conaway),
JACK J. GAUTIER,
(Jack J. Gautier),
T. REESE WATKINS,
(T. Reese Watkins),
Attorneys for Will Parks Clay and Mattie Bell Anderson, Appellants.

Filed Jan. 24, 1957.

STIPULATION AS TO RECORD ON APPEAL.

(Title Omitted.)

It is hereby stipulated and agreed between Will Parks Clay and Mattie Bell Anderson, as Appellants, and United States of America, as Appellee, by and through their respective counsel of record, that the following shall constitute the agreed designation of the contents of the record on appeal in this case to the United States Court of Appeals for the Fifth Circuit, and the Clerk of this Court is directed to constitute as the record on appeal the following:

1. The indictment, including the Appellants' pleas of not guilty, entered on April 16, 1956, and the verdict of the jury rendered on October 19, 1956.

2. The respective sentences of the Court as to Appellant, Will Parks Clay, and Appellant, Mattie Bell Anderson, entered on October 26, 1956.

3. The search warrant with supporting affidavits and the return thereon dated June 21, 1955, respecting the premises known as 140 Morton Avenue, Athens, Georgia.

4. Motion for suppression of evidence and the return of property, filed by Appellant Will Parks Clay on April 14, 1956, together with the Court's order overruling the same dated April 19, 1956.

5. Motion for suppression of evidence and the return of property, filed by Appellant Mattie Bell Ander-

son on April 14, 1956, together with the Court's order overruling the same dated April 19, 1956.

6. Transcript of the record of the hearing on Appellants' respective motions to suppress, held on April 17, 1956 through April 19, 1956.

7. Transcript of the record of the trial of the case.

8. Charge of the Court.

9. Motion for new trial filed by Appellants on October 24, 1956, and the order of the District Judge overruling same, entered on November 2, 1956.

10. Notice of appeal filed by both Appellants on November 5, 1956.

11. Order of the District Judge, extending the time for filing and docketing record on appeal, entered on November 8, 1956.

12. Government exhibits 3 through 12 inclusive, 14, and 20 through 27 inclusive, admitted in evidence upon the trial of the case. It is further stipulated and agreed that the exhibits referred to in this Item 12, which were admitted in evidence on the trial of the main case, shall be transmitted in their original form as admitted in evidence on the trial of this case, with the record on appeal, to the office of the Clerk of the United States Court of Appeals for the Fifth Circuit, there to be kept on file until this case is decited, and then to be returned to the office of the Clerk of the United States District Court, Middle District of Georgia, at Macon, Georgia. It is further stipulated and agreed that none of said exhibits referred to in this item shall be printed.

13. This stipulation designating the contents of the record on appeal.

14. Statement of points to be relied upon by Appellants upon appeal.

15. District Judge's order for transmittal of the original papers and exhibits to the United States Court of Appeals.

So Stipulated and Agreed, this 24th day of January, 1957.

ROBERT B. THOMPSON,
Assistant United States
Attorney, Attorney for the
United States of America,
Appellee.
T. A. JACOBS,
(T. A. Jacobs),
PAUL M. CONAWAY,
(Paul M. Conaway),
JACK J. GAUTIER,
(Jack J. Gautier),
T. REESE WATKINS,
(T. Reese Watkins),
Attorneys for Will Parks
Clay and Mattie Bell
Anderson, Appellants.

ORDER.

The foregoing stipulation having been read and considered, the same is hereby approved and ordered filed by the Court. Good cause having been shown, it is further ordered and directed that the Clerk of

this Court transmit with the record on appeal in this case to the United States Court of Appeals for the Fifth Circuit the following documentary evidence and exhibits in their original form, to-wit: Government exhibits numbers 3 through 12 inclusive, 14 and numbers 20 through 27 inclusive.

It is further ordered that after the decision of this case on appeal said exhibits be returned to the Clerk of this Court.

So Ordered and Adjudged, this 26 day of January, 1957.

W. A. BOOTLE,
United States District Judge.

We, the undersigned, consent to the entry of the foregoing order.

ROBERT B. THOMPSON,
Assistant United States Attorney, Attorney for United States of America, Appellee.
T. A. JACOBS,
(T. A. Jacobs),
PAUL M. CONAWAY,
(Paul M. Conaway),
JACK J. GAUTIER,
(Jack J. Gautier),
T. REESE WATKINS,
(T. Reese Watkins),
Attorneys for Will Parks Clay and Mattie Bell Anderson, Appellants.

Filed Jan. 24, 1957.

CLERK'S CERTIFICATE.

In the District Court of the United States, Middle District of Georgia, Macon Division.

Will Parks Clay and Mattie Bell Anderson, Appellants,
vs. Criminal No. 7258.
United States of America, Appellee.

United States of America,
Middle District of Georgia.

I, JOHN P. COWART, Clerk of the District Court of the United States in and for the Middle District of Georgia, do hereby certify that the foregoing and attached 526 pages contain a true, full, complete and correct copy of the original record and all proceedings had in the above stated cause, as specified in the designation of contents of record on appeal of counsel herein and as the same remains of record and on file in the Clerk's Office of said District Court at Macon, Georgia.

In witness whereof, I have hereunto set my hand and the Official Seal of the Said District Court at Macon, Georgia, this 29th day of January, 1957.

JOHN P. COWART,
(John P. Cowart),
Clerk, U.S. District Court,
Middle District of
Georgia.

(Seal).

LIBRARY
SUPREME COURT, U.S.

FILED
AUG 23 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 398

WILL PARKS CLAY and MATTIE BELL ANDERSON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
for the Fifth Circuit.

DENMARK GROOVER, JR.,
520 First National Bank Building,
Macon, Georgia,
T. ARNOLD JACOBS,
610 Persons Building,
Macon, Georgia,
JACK J. GAUTIER,
610 Persons Building,
Macon, Georgia,
T. REESE WATKINS,
914 Persons Building,
Macon, Georgia,
Counsel for Petitioners.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. .....

WILL PARKS CLAY and MATTIE BELL ANDERSON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

Petitioners, Will Parks Clay and Mattie Bell Anderson, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on the 29th day of June, 1957.

OPINION BELOW.

The opinion of the Court of Appeals for the Fifth Circuit (R. 450-465) has not been reported and is reproduced in the Appendix to this petition.

JURISDICTION.

The judgment of the Court of Appeals for the Fifth Circuit was entered on the 29th day of June, 1957 (R. 466). Petitioners filed a petition for rehearing on the 19th day of July, 1957 (R. 467-470), which, after consideration, was denied by the Court of Appeals without opinion on the 5th day of August, 1957, Chief Judge Hutcheson dissenting (R. 479). The jurisdiction of this Court is invoked under 28 U. S. C., 1254 (1).

QUESTIONS PRESENTED.

On June 21, 1955, United States Treasury agents obtained a warrant (R. 11-14) from the United States Commissioner at Macon, Middle District of Georgia, authorizing them to search the home of Petitioners, known as 140 Morton Avenue, Athens, Georgia, for lottery evidence. On that day they executed the warrant, arrested Petitioner Clay on the premises, seizing from him some lottery tickets and thereupon forcibly entered Petitioners' home, searched it and seized additional evidence relating to a lottery (R. 29-45, 58-65). On February 16, 1956, a grand jury returned an indictment in three counts, the first count charging Petitioners and others with conspiracy to violate sections of the Internal Revenue Code, which prohibit wilful attempts to evade and defeat the payment of the wagering occupational tax and the Federal excise tax imposed on wagers. Counts 2 and 3 charged Petitioner Clay alone with the substantive offenses of wilfully attempting to evade and defeat the payment of such taxes (R. 2-7).

Petitioners each filed timely motions under Rule 41 (e) of the Federal Rules of Criminal Procedure for return and suppression as evidence of the property seized by the Federal officers under the search warrant which they exe-

cuted. After a hearing, the District Court overruled each of the motions on April 19, 1956 (R. 20-28). Thereafter, Petitioners were tried and convicted on the indictment, the property so seized being admitted in evidence against them (R. 8-10). On appeal, the Court of Appeals for the Fifth Circuit, in a two to one decision, affirmed the judgments of conviction (R. 466). The questions presented are:

1. Was the search warant used by the officers to enter and search Petitioner's home, and which the Court of Appeals said authorized the arrest and search of the person of Petitioner Clay, while he was on the premises of his home, valid as having been issued in accord with the Fourth Amendment to the Constitution of the United States and Rule 41 of the Rules of Criminal Procedure?

2. Is a search warrant issued by a United States Commissioner valid wherein he stated in effect that his finding of probable cause for its issuance is based at least in part on the affidavit of an officer who never appeared before the Commissioner and who never made an affidavit stating the facts and conclusions attributed to him by the Commissioner?

3. Is a warrant to search a private dwelling valid where no person appearing before the issuing magistrate has made affidavit categorically stating that he has reason to believe that a crime is being committed on the premises to be searched or that incriminating evidence is being kept or concealed on such premises?

4. Does the affidavit of an officer made on June 21, 1955, to support the issuance of a warrant to search Petitioners' home for lottery paraphernalia, disclosing that on and before, but not after, June 6, 1955, neither of Petitioners had purchased the special occupational stamp required of lottery operators, show, without more in that connection, probable cause for believing that Petitioners had not pur-

chased such stamp on or before June 21, 1955, the date on which the warrant was issued?

5. Was the Court below correct in holding that the United States Commissioner, who issued the search warrant for Petitioners' home, could properly accord substance and weight to an unsigned and unsworn document (Completed basic affidavit form for search warrant) in determining the existence of probable cause merely because such unsigned document was physically attached to three other affidavits made before him?

CONSTITUTIONAL PROVISIONS AND FEDERAL RULES INVOLVED.

The Fourth Amendment to the Constitution of the United States and the pertinent provisions of Rule 41 (c) of the Federal Rules of Criminal Procedure are set forth in the Appendix.

STATEMENT.

On June 21, 1955, Richard E. Lewis, William A. Morris and William A. Pair, all Special Agents, Intelligence Division, Internal Revenue Service, United States Treasury Department, appeared before United States Commissioner Walter F. Doyle at Macon in the Middle District of Georgia and made affidavits for issuance of a warrant to search the premises known as 140 Morton Avenue, Athens, Georgia, which the record discloses was Petitioners' home (R. 16-20). In neither of these affidavits is it specifically stated that the affiant had reason to believe that a crime was being committed on the premises of Petitioners' home, or that lottery paraphernalia was being concealed therein. The affidavit of Richard E. Lewis shows that he had observed Petitioner Clay on two occasions carry into his house a paper bag of the sort that is commonly used by lottery

operators in carrying lottery paraphernalia; that Clay had a reputation for engaging in the business of accepting wagers for profit and that he was known to his neighbors as "Mr. Anderson", an alias (R. 16-17).

The affidavit of Agent William A. Morris merely recites that on June 6, 1955, he searched the records in the office of the District Director of Internal Revenue and found that Petitioners had not obtained on that day or at any time prior thereto "a special occupational stamp" for the fiscal year ending June 30, 1955. He also stated that telephone company records showed that within six months prior to June 20, 1955, a number of long distance calls had been made from the 140 Morton Avenue house to known or reputed lottery operators (R. 18).

Agent Pair stated in his affidavit that he had been reliably informed that Petitioner Clay was carrying on gambling activities in the home of Petitioner Anderson; that he had trailed Clay's car to the 140 Morton Avenue address and found that the telephone in the house was listed in the name of Mrs. Anderson's mother. In addition, he stated that on two previous occasions he had arrested Clay and had both times found lottery equipment on his person (R. 18-20).

There was attached to these three affidavits an affidavit of Fleming G. duBignon, a special agent of the Internal Revenue Service, which had been made on June 20, 1955, before James M. Sutherland, another special agent of the Internal Revenue Service in the Northern District of Georgia at Atlanta, Georgia. duBignon stated in this affidavit that he had personally checked records in the office of the District Director of the Internal Revenue Service and found that no occupational tax stamp had been purchased by either of petitioners. duBignon did not say in his affidavit when this record search was made by him (R. 15-16).

These four affidavits were attached to an unsigned document entitled "Affidavit for Search Warrant", on which the Commissioner entered his jurat. The unsigned document is in the usual form of a basic affidavit for a search warrant, and indicates that the would-be affiant had been sworn and under oath stated that he had reason to believe that there was being concealed lottery paraphernalia in the premises at 140 Morton Avenue, Athens, Georgia (R. 14-15). All of these documents were attached to the Commissioner's search warrant, in which the Commissioner states (R. 11-12), that Pair, Morris and Lewis had made affidavits before him and that "an affidavit having been made by F. G. duBignon that he has reason to believe that on the premises known as 140 Morton Avenue, Athens, Georgia . . . there is now being concealed certain property; namely, books, records, papers, documents and memorandum, relating to the business of accepting wagers by a person or persons liable for the payment of the special tax provided for and imposed by Sections 4411 and 4412 (c) I. R. C. of 1954, which has not been paid, all in violation of Section 7203, I. R. C. of 1954. . . ."

On this showing the Commissioner determined that probable cause existed for issuance of the warrant to search Petitioners' home.

Using the warrant so issued, the officers proceeded to 140 Morton Avenue, Athens, Georgia, arrested Petitioner Clay on the front porch of the house, seizing from him lottery evidence, forcibly entered the house, searched it and therein seized all of the incriminating evidence used against Petitioners on the trial of the case, and which is listed on the officers' return upon the warrant (R. 12-14), plus other property unrelated to a lottery, including life insurance policies and money.

Petitioners timely filed their respective motions for return of the property so seized and the suppression of it

as evidence against them. These motions were overruled by the District Court, and Petitioners were thereafter tried and convicted, the evidence so seized being used against them (R. 20-28; 341-345).

On appeal the Court of Appeals for the Fifth Circuit apparently agreed with Petitioners that the affidavit of Agent duBignon, made in Atlanta, Georgia, before another special agent of the Internal Revenue Service, was of no effect whatever, since it was not made in person before the Commissioner. **(Davis et al. v. United States [C. A. 5], 35 F. [2] 957.)**

However, the majority of the court below held that the affidavits executed by Agents Lewis, Morris and Paif, and the unsigned document entitled "Affidavit for Search Warrant" to which these three affidavits were attached should all be considered together, and that, if so, the unsigned document became a part of the other three executed affidavits which in toto sufficiently established the grounds for the Commissioner's action in issuing his search warrant. It held the fact of no signature on the "basic affidavit" was immaterial. The majority afforded this novel and, so far as we can determine, unprecedented treatment to a blank document on the purported authority of **Gregory v. United States (C. A. 5), 237 F. (2) 727**, saying that the "Rule of Reason" stated in that case required a finding that the absence of any signature on the "Affidavit for Search Warrant" document was immaterial. However, Chief Judge Hutcheson of the Court of Appeals, who dissented, pointed out that the Commissioner apparently treated the unsigned document, which was almost completely embodied by the Commissioner in his search warrant, as signed and sworn to, since the Commissioner's jurat was attached to it. Judge Hutcheson held that since this affidavit was neither signed nor sworn to, and subdivision (c) of Rule 41 of the Federal Rules of Criminal Procedure requires that a "warrant shall issue only on

an affidavit sworn to before the Judge or Commissioner and establishing the grounds for the warrant" he was of the opinion that the search warrant was carelessly, improvidently and unlawfully issued, and that the judgment of conviction as to both Petitioners should be reversed because of the failure of the trial court to quash the warrant and suppress the evidence obtained by its use (R. 462-465).

REASONS FOR GRANTING THE WRIT.

1. The decision below should be reviewed because the Court of Appeals in a two to one decision has so far sanctioned a departure from the accepted and usual course of proceedings before a magistrate for issuing search warrants as to call for the exercise of this Court's power of supervision. Most recently, this Court, in **Rea v. United States, 350 U. S. 214, 100 L. Ed. 233, 76 S. Ct. 292,** granted a petition for certiorari in order to exercise its supervisory powers over federal law enforcement agencies.

The majority opinion below permits a magistrate to accord substance and real effect to an unsigned and unsworn document, which, on its face, purports to be a basic affidavit for search warrant. The affidavits of Agents Morris, Lewis and Pair were the only ones which were made in person by the affiants before the Commissioner who issued the warrant. The affidavit of Agent Fleming G. duBignon was made the day before the warrant was issued before another special agent of the Internal Revenue Service, and not before the Commissioner. The Court of Appeals evidently agrees with our contention that the duBignon affidavit is of no force whatever. **Davis et al. v. United States (C. A. 5), 35 F. (2) 957.** The affidavits of the officers who did appear before the Commissioner relate certain facts which are so disconnected as to make it apparent that these three affidavits alone were insuffi-

cient to show probable cause for issuance of the search warrant. This the Commissioner apparently conceded, and the Court below, in effect, held.

In his warrant the Commissioner recites that the three officers who actually appeared in person before him made affidavits, but he recites further that Fleming G. duBignon made an affidavit that he, duBignon, had reason to believe that on the premises to be searched there were concealed books, records, papers, etc., relating to the business of accepting wagers. Fleming G. duBignon did not appear before the Commissioner and made no affidavit saying he had reason to believe that such books and records were being so concealed. The unsigned and unsworn affidavit, therefore, is obviously the affidavit which was prepared for duBignon's signature. It was not signed because he did not appear. It was only on the basis of the proposed affidavit of duBignon together with the other three affidavits, that the Commissioner issued the warrant. The majority of the Court of Appeals sanctioned this procedure by holding, in effect, that the three properly executed affidavits of Agents Morris, Lewis and Pair, **together with the first document to which they were attached** (unsigned and unsworn affidavit for a search warrant), all together sufficiently established the grounds for issuing the warrant and that therefore it was immaterial whether agent duBignon's proposed affidavit was unsigned because it became a part of the three signed affidavits.

The procedure followed by the Commissioner in issuing a warrant for the search of a home in part on the basis of what was contained in an unsigned and unsworn affidavit which apparently was to have been signed by a person who did not appear before him, would seem to be a radical departure from the strict requirements of the Fourth Amendment and Rule 41 (*c*) of the Federal Rules of Criminal Procedure.

Such a procedure affords a magistrate the right in search warrant cases to base a finding of probable cause on virtually anything not contained in an affidavit signed and sworn to before him. He might prepare a memorandum based on information from any source, attach it to and make it a part of affidavits, which in themselves fall short of showing probable cause, but when considered with what is said in his memorandum would show probable cause; thus, if such a practice were condoned by this Court, the protection afforded by the Fourth Amendment would be lost.

A rule of procedure permitting such laxity, if adopted, would constitute a far reaching departure from the accepted practice which requires a commissioner to exercise scrupulous care to insure strict compliance with the mandate of the Fourth Amendment to the Constitution and Rule 41 (c) of the Federal Rules of Criminal Procedure. **Go-Bart Importing Co. v. United States, 282 U. S. 344, 75 L. Ed. 374, 382, 51 S. Ct. 153; Murby v. United States (C. A. 1), 293 F. 849; Grau v. United States, 287 U. S. 124, 77 L. Ed. 212, 53 S. Ct. 38.**

2. (a) This Court should exercise its discretionary jurisdiction and review the decision below because an important Federal question has been decided in a way which, we believe, is in conflict with applicable decisions of this Court. The Court of Appeals has sanctioned the use by the Commissioner of an unsigned document coupled with affidavits which are signed in making his over-all determination of the existence of probable cause for issuance of a warrant to search a private dwelling. Such a ruling, we think, is contrary to the broad principles announced by this Court in the case of **Go-Bart Importing Co. v. United States**, supra, where it is said that the Fourth Amendment to the Constitution prevents the issuance of search warrants on loose, vague or doubtful bases of fact, and where it is also held that the Amendment is to be

liberally construed "lest there be impairment of the rights for the protection of which it was adopted." Also, the ruling of the Court below is hardly consistent with the following proposition stated in **Sgro v. United States, 287 U. S. 206, 77 L. Ed. 260, 53 S. Ct. 157:**

> "The proceeding by search warrant is a drastic one. Its abuse lead to the adoption of the Fourth Amendment, and this, together with legislation regulating the process, should be liberally construed in favor of the individual."

A liberal construction of the Fourth Amendment and Rule 41 (c) of the Federal Rules of Criminal Procedure favoring the individual obviously would not permit a magistrate to issue a warrant to search a private dwelling where he has considered, at least in part, matter contained in an unsigned and unsworn document, in making his determination of probable cause. Moreover, the magistrate's warrant in this case states categorically that F. G. duBignon had appeared before him and made an affidavit stating that he had reason to believe that certain lottery paraphernalia was being concealed in the premises to be searched, while in truth, duBignon had made no appearance before the Commissioner and had made no affidavit before any person to that effect.

In reaching its conclusion that the Commissioner could properly consider the unsigned document together with the signed affidavits, the Court of Appeals relied on its ruling in **Gregory v. United States (C. A. 5), 237 F. (2) 727.** In that case the Court of Appeals applied a standard of reasonableness in interpreting the language contained in a search warrant. No question was involved as to what matters the Commissioner could consider in determining the existence of probable cause for issuance of the warrant. Thus, the "rule of reason" relied on by the Court below for sanctioning the Commissioner's use in this case of an unsigned and unsworn document in making his finding of

probable cause, has no application whatever to the situation here involved.

2. (b) Section 4411, Title 26, United States Code, renders persons engaged in the business of accepting wagers or engaged in the business of conducting a lottery, liable for the payment of a special occupational tax. Gambling businesses may be forbidden by state law, but are not prohibited by Act of Congress. It is only through the licensing and taxing requirement that the Federal Government exercises jurisdiction over such businesses. **United States v. Office No. 508, Ricou-Brewster Building (D. C., W. D., La.), 119 Fed. Supp. 24, 28.** Accordingly, the fact of non-registration and non-payment of the occupational tax is an essential element of proof required before a Commissioner on an application for a warrant to search a private home in which it is alleged that lottery paraphernalia is concealed, in violation of Acts of Congress taxing lottery businesses. Proof of such non-payment as of the time the warrant is issued must be made. This is implicit from the decision of this Court in **Sgro v. United States**, supra. The statement of Justice McReynolds, separately concurring in that case, is in pertinent part as follows:

> "The statutes require that a warrant to search for intoxicating liquors shall rest upon duly established probable cause to believe that **at the time it issues**, the liquor is unlawfully possessed. The supporting affidavit must relate to facts which tend to show an unlawful situation actually or probably existing **at the moment.**" (Emphasis supplied.)

Rule 41 (c) of the Federal Rules of Criminal Procedure, which is a mere restatement of existing law, leaves no room for a different interpretation. Agent duBignon's affidavit which was made in Atlanta, Georgia, one day before the officers appeared before the Commissioner in Macon to obtain the warrant in this case, must be disregarded because it was not made before the Commissioner.

Davis et al. v. United States (C. A. 5), 35 F. (2) 957. Thus, the only showing of non-payment of the occupational tax imposed on persons engaged in a lottery is that contained in the affidavit of Agent Morris. In it Morris states he searched the appropriate records on June 6, 1955, fifteen days before he made his affidavit before the Commissioner, and failed to find that petitioners had obtained the required occupational tax stamps. Morris' affidavit, therefore, did not establish that Petitioners were violating a Federal statute as of the time the warrant to search their home was issued by the Commissioner on June 21, 1955. Therefore, the Court of Appeals has decided this case in a way which, we believe, is contrary to the ruling in **Sgro v. United States**, supra.

3. This case ought to be reviewed because the Court below has avoided a decision on an important question of Federal Law which has not been, but should be, squarely decided by this Court. It seems inherently required by the Fourth Amendment and Rule 41 (c) of the Federal Rules of Criminal Procedure that an officer or person applying for a warrant to search a private dwelling should entertain, at the time of his application, a bona fide belief that a Federal crime is being committed in the house or that incriminating evidence is concealed therein. In this case, the Commissioner's warrant states that F. G. duBignon had made oath that he had reason to believe that such was the case. Yet, the record shows that duBignon did not appear before the Commissioner and made no such oath. In addition, none of the remaining affidavits attached to the warrant contain a statement showing that any one of the affiants entertained such a belief.

In **Aderhold v. United States (C. A. 5), 132 F. (2) 858,** it is held:

> "In determining what is probable cause, the question is whether the affiant, at the time of his affidavit, had reason to believe, **and did believe,** from facts

within his knowledge, that the law was being violated on the premises to be searched." (Emphasis supplied.)

The point we wish to emphasize is that no warrant to search a home should issue unless those applying for it have shown the Commissioner that they believe the grounds stated in the application therefor to be true. Certainly, an officer may not arrest and search an individual without a warrant unless he believes that person to be committing a crime and is aware of facts reasonably supporting that belief.

The Court of Appeals did not decide the question raised in this connection. The only affidavits properly executed before the Commissioner were those of Agents Lewis, Morris and Pair. If it is said that from the facts stated in these affidavits the Commissioner could infer that lottery records were being concealed in the house of petitioners, there is yet lacking a basis for finding that the officers in good faith believed that such records were so kept. To find that the officers entertained such belief would require the placing of one inference upon another. This will not do because it is well established that the basis of a presumption must be a fact and not another presumption. **United States v. Lassoff (D. C., W. D., Ky.), 147 Fed. Supp. 944, 948. (Cf. United States v. Ross, 92 U. S. 281, 23 L. ed. 707; United States v. Carr, 132 U. S. 644, 33 L. ed. 483, 10 S. Ct. 182.)**

4. The questions presented by this case are of great and recurring significance in the administration of the criminal laws of the United States. The numerous decisions of this Court, beginning with **Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, 6 S. Ct. 524,** and continuing through **Kremen v. United States, 353 U. S. . . ., 1 L. Ed. (2) 876, 77 S. Ct. . . .,** all bear witness to the serious nature of the questions involved. We agree with Chief Judge Hutcheson of the Court below in saying that "hard cases make bad

law:" The fact that the search warrant here was issued by the Commissioner at least in part on information furnished not under the pains and penalties of perjury makes this case a peculiarly appropriate one for the exercise of this Court's discretionary power to review.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

DENMARK GROOVER, JR.,
520 First National Bank Building,
Macon, Georgia,

T. ARNOLD JACOBS,
610 Persons Building,
Macon, Georgia,

JACK J. GAUTIER,
610 Persons Building,
Macon, Georgia,

T. REESE WATKINS,
914 Persons Building,
Macon, Georgia,

Counsel for Petitioners.

Proof of Service.

Georgia, Bibb County.

Personally appeared before me, the undersigned attesting officer, authorized to administer oaths, T. Reese Watkins, who, first being duly sworn, deposes and says that he is an attorney at law, with an office at 914 Persons Building, Macon, Georgia, and that he is one of the attorneys of record for the Petitioners, Will Parks Clay and Mattie

Bell Anderson. Deponent says that he has not been admitted to practice in the Supreme Court of the United States.

Deponent says that on the ..... day of August, 1957, he served copies of the foregoing and attached petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit on the several parties thereto as follows:

1. On the United States, by mailing a copy in a duly addressed envelope with sufficient air mail postage prepaid to The Solicitor General, Department of Justice, Washington 25, D. C.

2. On the United States, by mailing a copy in a duly addressed envelope with sufficient air mail postage prepaid to Frank O. Evans, Esq., United States Attorney for the Middle District of Georgia, at his office at Room 303, United States Post Office and Court House Building, Macon, Georgia.

Deponent says that this affidavit is made in order to comply with the requirements of Rule 33, Revised Rules of the Supreme Court of the United States.

.....

Sworn to and subscribed before me this ..... day of August, 1957

.....

Notary Public.

APPENDIX.

Opinion.

In the
United States Court of Appeals,
For the Fifth Circuit.

No. 16,385.

Wills Parks Clay and Mattie Bell Anderson,
Appellants,

versus

United States of America,
Appellee.

Appeals From the United States District Court for the Middle District of Georgia.

(June 29, 1957.)

Before Hutcheson, Chief Judge, and Tuttle and Cameron, Circuit Judges.

Hutcheson, Chief Judge: Charged in three counts of an indictment, count one charging him with a conspiracy with Mattie Bell Anderson and others to violate sections of the Internal Revenue Code prohibiting wilfully attempting to evade and defeat the payment of the wagering occupational tax and the federal excise tax imposed on wagers, and counts two and three charging him alone with the substantive offenses of wilfully attempting to evade and defeat the payment of said taxes, and con-

victed on all of these, Clay is here urging: that he was convicted by the use of evidence obtained in violation of the fourth amendment and because thereof the judgment must be reversed.

Mrs. Anderson, who was convicted on the conspiracy count and has appealed, makes the same claim and, in the alternative, claims that the evidence as a whole was insufficient to convict her.

In support of their primary claim, appellants assert: (1) that the search warrant, under authority of which the defendant's house was searched, was not in accordance with, but in violation of, Rule 41,[1] and that no probable

---

[1] "Rule 41. Search and Seizure

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a judge of the United States or of a state or territorial court of record or by a United States Commissioner within the district wherein the property sought is located.

(b) Grounds for Issuance. A warrant may be issued under this rule to search for and seize any property.

(1) Stolen or embezzled in violation of the laws of the United States; or

(2) Designated or intended for use or which is or has been used as the means of committing a criminal offense; or

(3) Possessed, controlled, or designed or intended for use or which is or has been used in violation of Title 18, U. S. C., Sec. 957.

(c) Issuance and Contents. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. * * *."

Sec. (e) makes provision for a motion for return of the property and to suppress evidence. Rule 41, Fed. Rules of Criminal Procedure, 18 U. S. C. A.

cause was shown to support its issuance; and (2) that the evidence obtained from appellant Clay at the time of his arrest was taken without a warrant of arrest and without probable cause for arresting him and seizing it.

Appellee, on its part, urges upon us that the search warrant was validly issued upon an adequate showing of probable cause and that the arrest and search of Clay at his residence was also valid. As to the sufficiency of the evidence to convict Mrs. Anderson of conspiracy it insists that the record amply supports the verdict, indeed that any other verdict would have been unreasonable.

A brief statement of the facts[2] will disclose, we think, that there is little if any conflict in them, and that our

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[2] On June 21, 1955, at about 2:40 P. M. Clay drove his automobile into the yard of a dwelling house located at 140 Morton Avenue, Athens, Georgia, which had been purchased by Mrs. Anderson's mother and was lived in by Mrs. Anderson and Mr. Clay. Government agents had been watching the house for some time and, according to plan some of them had been following and some were waiting for Clay to arrive at that address. As soon as he drove into the yard, federal agents drove in behind him. Clay got out of his automobile, in his hand a brown paper bag, the type, according to some of the testimony, which lottery people carry their lottery tickets in, and of a similar description and size to those one of the agents had seen Clay take into the house on the preceding Thursday and Friday.

When Clay saw the three government agents, he started running to the house, and though Agent Pair shouted to him to halt and advised him that he and the other agents were federal officers, Clay continued to run. When he reached the front porch which was only a few steps from his car, he was physically apprehended by Pair and Lewis and, either because of the collision or the ensuing struggle which followed, the brown paper bag Clay was holding split and a smaller bag fell to the porch. Lewis picked the smaller bag up and said, "This is it," and both officers told Clay he was under arrest.

At this particular moment, Morris, another agent who had physical custody of the search warrant which had been procured in anticipation of Clay's arriving at the house, requested Mrs. Anderson to open the front door, advising her that he had a search warrant to search the premises, and upon her refusal, the officers jerked

determination of the question of law arising thereout will be dispositive of the appeal.

The appellants, relying for their attack upon the search warrant upon claimed defects in it and for their attack upon the arrest and search of Clay upon the opinion of this court in **Clay v. United States**, 239 F. (2) 196, holding that a search of his person under the facts there shown was not a reasonable search, insist that the arrest and the search and seizure were invalid, the evidence obtained thereby should have been suppressed, and the conviction obtained by its use must be set aside.

Directing their main attack upon the search warrant, appellants thus state their case against it:

> "The point we wish to emphasize here is that **no person appearing** before the Commissioner stated that

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the screen door open and entered the house. Mrs. Anderson refusing to accept the warrant, Pair laid it on the television set in the living room where she was, and proceeded with his search and seizure.

At the hearing on the motions to suppress, Clay testified that 140 Morton Avenue was his personal residence, that on June 21 when he drove up into the yard, got out of his car, and started to go into the house—and he had a right to go into it—if he had not been arrested he would have entered it. He further testified that when he was at the house he had free run of it, and in effect every room in it was under his custody and control. After the brown bag had been seized from him, Clay was subjected to a perfunctory search and so was the automobile. The officers who produced the search warrant and executed the search and seizure were experienced investigators and they testified fully as to how the operation was conducted. They also testified on the trial: that they had received reliable information to the effect that Clay was operating a lottery and that he was checking up at Athens; that they first determined that he had not complied with the requirements of the wagering tax act and then established a watch over his activities. Having observed him for several days, they procured the search warrant to search the place which, in the affidavit for the search warrant and in his testimony one of them swore was being used as the place of Clay's checking up operations. They waited near the house until Clay arrived before they drove to the premises but when they saw Clay with the paper bag in his hand and running for the house, they apprehended and arrested him.

he had reason to believe that, as the warrant itself states, 'there is now being concealed certain property; namely, books, records, papers, documents and memoranda relating to the business of accepting wagers.' Nothing is said in the four signed affidavits which would lead a reasonably discreet person to believe that any such books, records, etc., were being concealed at the place in question. In other words, there is no fact allegation or statement that the books and records were being concealed in the house, and for this reason alone there was no basis for the issuance of the warrant. Even if such a conclusion had been stated by any one of the affiants there would still be absent from the affidavits such fact statements as would justify a reasonably prudent person in concluding that lottery paraphernalia was, on the 21st day of June, 1955, concealed in the premises by a person or persons engaged in carrying on a lottery business without having first purchased the occupational stamps required by law. In the four affidavits which are signed, only the most loose, vague, doubtful and disconnected facts are stated. * * *"

Thus appellant's attack upon the search warrant reduced to their ultimate substance are: that the affidavits on which it was based did not sufficiently show that lottery records would be found in the house to be searched; that no person appearing before the commissioner, stated under oath that he has reason to believe that there is now being concealed in the premises to be searched certain property, viz., books, papers, records and memoranda relating to the business of accepting wagers, and that nothing was said in the four affidavits which would lead a reasonably discreet person to believe that any such property was being concealed there; that, in short, there is no sworn to fact allegation or statement that books or records or other paraphernalia are being concealed at the

house, and because this is so, there was no basis for the warrant. In further support of their attack, urging upon us that the only papers attached to the search warrant which contained any reference to the fact that described property was being concealed at 140 Morton Avenue, Athens, Georgia, or sought a search warrant to seize it, was in blank and that, of the affidavits, one of them was not taken before the commissioner and the others made no specific statement as to any property being in the residence, they insist that it must be held that the search warrant was invalid and the search of the house was therefore not supported.

The United States, citing numerous cases,[3] presses upon us that in each case involving arrests and searches and seizures, the question for decision is whether the evidence as a whole supports the conclusion of the district judge that the action of the commissioner in issuing the search warrant or the action of the officer in making an arrest was or was not reasonable. It urges in short that there is no hard and fast rule precisely pinpointing what should be said and done in applying for and issuing a search warrant or what facts must appear to justify an arrest and search without a warrant; that in each case the inquiry is, are the facts put forward to support the action impeached in any way and, if not, are they as a whole sufficient to support the view that the conclusion reached and the action taken in accordance with the rule were not unreasonable but reasonable.

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[3] Including: Brinegar v. U. S., 338 U. S. 160; U. S. v. Wreblewski, 105 F. (2) 444; Walker v. U. S., 225 F. (2) 447; Flores v. United States, 234 F. (2) 604; Lowery v. U. S., 161 F. (2) 30; Hysler v. U. S., 86 F. (2) 918; *Dixon v. United States*, 211 F. (2) 547; Clifton v. United States, 224 F. (2) 329; *Cannon v. United States*, 158 F. (2) 953; Kelly v. United States, 61 F. (2) 843; to which may be added United States v. Trujillo, 191 F. (2) 853; Byrd v. U. S., 216 F. (2) 609; Jones v. U. S. (5 Cir.), 6-10-57, ... F. ( ) .....

We find ourselves in general agreement with the position of the United States that the rule of reason applies in the consideration and determination of questions such as those presented here, and the majority is of the opinion for the reasons hereafter stated, that its application requires affirmance of the judgment.

The documents that were before the Commissioner when he issued the search warrant consisted of five papers physically attached. The first of these was a blank unsigned form of affidavit which is here reproduced in full:

"Affidavit for Search Warrant.

"District Court of the United States, Middle District of Georgia, Macon Division.

Commissioner's Docket No. 2
Case No. 532.

United States of America,

vs.

Premises known as 140 Morton Avenue, Athens, Georgia.

Before (Name of Commissioner) Walter F. Doyle, (Address of Commissioner) Macon, Georgia.

The undersigned being duly sworn deposes and says: That he (has reason to believe) on (on the premises known as) 140 Morton Ave., Athens, Georgia, Athens Division, in the Middle District of Georgia, there is now being concealed certain property, namely, (here describe property) books, records, papers, documents and memorandum relating to the business of accepting wagers by a person or persons (here give alleged grounds for search and seizure), liable for the payment of the special tax provided for and imposed by Sections 4411 and 4412a, IRC of 1954,

which has not been paid, all in violation of Section 7203, IRC of 1954.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

See attached affidavits.

.....

Signature of Affiant.

.....

Official Title, if Any.

Sworn to before me and subscribed in my presence, June 21, 1955.

Walter F. Doyle,

(Seal) United States Commissioner."

Attached to this paper were four affidavits, one of them sworn to before a special agent of the Internal Revenue Service (and thus of no validity or import in this connection), the other three sworn to before the Commissioner, as required by law, all documents bearing the date June 21, 1955.

Rule 41, quoted above, requires that for the Commissioner to issue a search warrant he must make a determination that "the grounds for the application exist or that there is probable cause to believe that they exist." If the affidavits which conformed to the requirements of the rule were sufficient to support such a determination of probable cause by the Commissioner, neither the trial court nor an appellate court is justified in quashing the warrant as void. In construing the document we must apply the rule of reason. **Gregory v. United States** (5 Cir.), 237 F. (2) 727. If, therefore, the three properly executed affidavits, together with the first document to which they were attached, altogether sufficiently establish the grounds for

issuing the warrant, then it is immaterial that there was no signature on the first document, because it became a part of the other three affidavits.

We must thus determine whether together the affidavits were sufficient to establish the grounds for issuing the warrant. We are satisfied that they were.

From the affidavit of Agent Richard E. Lewis it appeared that appellant Clay had several times been seen carrying into the house in question paper bags of the sort that were commonly used by lottery operators in carrying lottery paraphernalia, that he had a reputation for engaging in the business of accepting wagers for profit, and that he was known to the neighbors as "Mr. Anderson," an alias.

Agent William A. Morris' affidavit recites that from a search of the records of the District Director of Internal Revenue it appeared that up to June 6, 1955, neither Will Parks Clay nor any person named Anderson had obtained the special occupation stamp for the fiscal year ending June 30, 1955, required of lottery operators. It was also cited that telephone company records showed that within the six months preceding June 20, 1955, a number of long distance telephone calls had been made from the 140 Morton Avenue house to known or reputed lottery operators.

Agent William A. Pair in his affidavit swears that he had been reliably informed that appellant Clay was carrying on gambling activities in the home of Mattie Bell Anderson; that he had trailed and traced Clay's car to the 140 Morton Avenue address; that he had determined that its phone was listed in the name of Mrs. Anderson's mother, and that he had twice previously arrested Clay and had both times found lottery equipment on him.

From these three affidavits the Commissioner could well find that the 140 Morton Avenue house was used by the known, but unregistered, gambler, Clay, for his operations,

and that since he had repeatedly been seen carrying packages likely to contain gambling paraphernalia into it, and had apparently made numerous "business" calls from it, it was probable that in the house there could be found "books, records, papers, documents and memorandum relating to the business of accepting wagers by a person" delinquent in his obligation to pay the special tax. Nothing in the affidavits supports appellants' contention that the Commissioner could only have concluded that there was probable cause to expect the presence of the described equipment in the house only at the times that Clay himself was there, nor are any cases cited for the implied proposition that a search warrant may not issue unless there is positive assurance that the property sought is continuously on the suspected premises—as a matter of fact Rule 41 (c) carefully distinguishes the affidavits required for the issuance of a daytime warrant from the positive assertions required for a warrant servable at any time.

There remains the question whether the reference to Agent duBignon's affidavit, which had been improperly signed before another agent rather than before the Commissioner himself, vitiates the otherwise proper warrant. We do not believe that it does. The faulty affidavit recites merely a search of the records of the District Director of Internal Revenue, at an unspecified time, from which it appeared that neither Will Parks Clay, under that name or under any likely alias, nor any known employee of his, nor, in fact, any person in Clarke County, Georgia, had taken out a gambling tax stamp; thus the contents of the affidavit merely duplicate part of the facts recited by Agent Morris.

Furthermore, no case has been cited or found that holds that where the Commissioner refers to improper as well as to proper sources as the bases for his determination of probable cause, and the proper sources are adequate to support that determination, the warrant is still defective.

There is no reason for analogizing the ex parte proceeding before a Commissioner in obtaining a warrant to the finding of fact of the trial court which may be set aside if possibily based in part on improper evidence, for in the latter case each piece of evidence presented to and considered by the court may be objected to by the opposing party and thus the court is warned that reliance on such evidence may be dangerous (or a failure to object waives most possible defects), while in issuing a warrant the Commissioner does not have the benefit of the cautioning guidance by opposing counsel; as the Government points out, Commissioners are not even required to be lawyers. Undoubtedly much that is contained in ex parte statements made to Commissioners to obtain a search or arrest warrant may be technically inadmissible, but if we find that that which was technically correct is sufficient to support the Commissioner's determination that in his opinion probable cause exists, we have no right to set it aside.

Finally, the appellant attacks the propriety of the court's refusal to suppress the evidence which was taken from Clay while standing on the porch of the Anderson house, assuming the search warrant for the premises was adequate. It is quite clear that without reference to the legality of the arrest of Clay, which we need not decide, the officers did have full authority under the search warrant to investigate the contents of the brown paper bag held in Clay's hand while on the front porch of the house. This is clearly within the principles stated in **Harris v. United States**, 331 U. S. 145, and **United States v. Rabinowitz**, 339 U. S. 56.

The judgment of the trial court was without error and should be affirmed.

Speaking for myself alone, though in full agreement with the position of the government and of the majority that the rule of reason applies in the consideration and deter-

mination of the questions presented here, I am unable to agree with the conclusion of the majority that the application of that rule requires an affirmance of the judgment. Because of the fact that the basic "affidavit for search warrant," which the commissioner apparently treated as signed and sworn to [see his jurat on page 15 of the record, and is almost complete embodiment by the commissioner in his search warrant][4] was neither signed nor sworn to, and Subdivision (c) of the rule, note 1, supra, provides that a warrant "shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for the warrant," I am bound to agree with the appellant that the search warrant was carelessly, improvidently and unlawfully issued, and that the judgment as to both defendants must be reversed because of the failure to quash the warrant and suppress the evidence obtained by its use.

This is a hard case and hard cases make bad law, but it seems clear to me that the issuance and use of a search warrant issued at least in part upon information furnished not under the pains and penalties of perjury because the so-called affidavit on which the commissioner mainly relied was not sworn to, has tainted the whole proceedings with

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[4] In the search warrant the commissioner thus states the basis for his action:

"Affidavit having been made before me by William A. Pair, William A. Morris and Richard E. Lewis, and an affidavit having been made by F. G. duBignon, that he (has reason to believe) that (on the premises known as) 140 Morton Avenue, Athens, Georgia, Athens Division in the Middle District of Georgia (here describe property) there is now being concealed certain property, namely, books, records, papers, documents and memorandum relating to the business of accepting wagers by a person, or persons, liable for the payment of the special tax provided for and imposed by Sections 4411 and 4412a, IRC of 1954, which has not been paid, all in violation of Section 7203, IRC of 1954 (here give alleged grounds for search and seizure), and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist. * * *"

illegality. In short, the act of the commissioner in issuing his jurat to an unsworn statement and presuming on the basis of that statement to issue a warrant was usurpation of authority which vitiates and nullifies the searches and seizures relied on to convict the defendants and requires a reversal of the judgment as to Mrs. Anderson because the only evidence against her was obtained by the use of the search warrant, and as to Clay because whether or not the search of his person was under circumstances justifying the use and admission of the evidence found on him, reversal of the judgment as to him was required because of the use of the evidence illegally obtained under the search warrant.

This is not to say with respect to the arrest and search of Clay at the house and his general reliance upon the opinion of this court in 239 F. (2) 196, as affording him safe conduct from molestation in his movements and activities, that the opinion was intended to, or that it can perform that office for him. That decision was based upon its own facts as they were particularly and carefully detailed in the opinion. It applies to and controls the decision of this case and other cases involving him only to the extent that the facts there dealt with reappear in them. If the acts of the officers in applying for, and of the commissioner in issuing, the search warrant had been in accordance with law, I think their actions in arresting Clay and seizing the brown paper bag as he approached the house to be searched would, in view of their having a valid search warrant, have been well within the law. Justice and due process are two-way streets, and, while as the decisions have many times stated, the right of a citizen to be free from unreasonable searches and seizures must be respected and preserved, so must the right of the agents and officers of the United States to make reasonable searches and seizures in the proper enforcement of its laws.

While we did say in the Clay case, supra, that the fact alone that a man is a known gambler does not permit his

arrest and search, we did not mean to, we did not say that that fact when considered with others, including the application for an issuance of a valid search warrant, will not support acts of officers, such as those here shown, done within the law to bring an offender to book. Mr. Clay will do well to remember that while the mills of the law grind slowly, they grind exceeding small, and that the pitcher that goes too often to the well leaves behind either the handle or the spout, and sometimes does not return.

With deference, I dissent from the judgment of affirmance.

Affirmed.

A true copy.

Attest:

Edward W. Wadsworth,
Clerk, U. S. Court of Appeals, Fifth Circuit,
By Gilbert F. Ganucheau,
Deputy.

New Orleans, Louisiana.

(Seal)

Constitution of the United States.

Amendment IV—Searches and Seizures.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Federal Rules of Criminal Procedure.

Rule 41. Search and Seizure.

"(c) Issuance and Contents. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned."

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In the Supreme Court of the United States

OCTOBER TERM, 1957

WILL PARKS CLAY AND MATTIE BELL ANDERSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
JUDKA P. COOPER,
Attorneys,
Department of Justice, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 398

WILL PARKS CLAY AND MATTIE BELL ANDERSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 17) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 29, 1957 (Pet. 17). A petition for rehearing was denied August 5, 1957 (Pet. 2). The petition for a writ of certiorari was filed on August 23, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Three affidavits by Internal Revenue agents signed and sworn to before a United States Commis-

sioner were attached to a form of affidavit for a search warrant which was not signed by the officers but which bore the seal and jurat of the Commissioner. The question is whether a search warrant was properly issued on the basis of these documents.

2. Whether there was probable cause for the issuance of the search warrant.

RULE INVOLVED

Rule 41 (c) of the Federal Rules of Criminal Procedure provides:

> (c) ISSUANCE AND CONTENTS. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the dis-

trict judge or the commissioner to whom it shall be returned.

STATEMENT

A three count indictment returned in the United States District Court for the Middle District of Georgia charged petitioners and others with conspiracy to evade and defeat the payment of taxes in connection with the "numbers" business, and charged petitioner Clay with the substantive offenses of attempting to evade such taxes (R. 2–7). Upon conviction after trial by jury, petitioner Clay was sentenced to four years' imprisonment and a fine of $4,000 on each count, the terms of imprisonment to run concurrently (R. 8–9). Petitioner Anderson was sentenced to eighteen months on count 1 (R. 10). The Court of Appeals affirmed.

Petitioner Clay was apprehended by agents of the Internal Revenue Service as he ran with a paper bag toward a house in Athens, Georgia, where he and petitioner Anderson resided and for which the agents had procured a search warrant. In the ensuing struggle, petitioner dropped the paper bag which contained lottery tickets and was arrested. A search of the premises yielded incriminating evidence of lottery operations.

The sole issue here is the validity of the search warrant which was sustained against petitioners' motion to suppress.

The warrant was issued by the Commissioner at Macon, Georgia, on June 21, 1955 (R. 11–12), and was supported by five documents. The first was a form headed "Affidavit for Search Warrant", which

described the premises to be searched, the property believed to be concealed therein and the general nature of the violation (R. 14–15), much in the same format as that employed in the search warrant. In the space following the words of the form "And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:" there were typed the words "See attached affidavits". The form was not signed by any officer, but the Commissioner's signature appears in the space provided therefor (R. 15).

Three annexed affidavits were sworn to before the Commissioner whose signature appears at the end of each (R. 16–20). The affidavit of agent W. A. Pair was to the effect that an informer of known reliability had reported, on June 6, that Clay was "checking up" his lottery operations in Anderson's house; that by trailing Clay's automobile at excessive speeds, and through contact with an informer, the agent was able to locate the house (the premises to be searched); that on five separate occasions, between June 6 and the date of the affidavit, Clay had changed automobiles at a service station, alighting from a 1951 Buick and entering a 1955 black Oldsmobile without license plates which the affiant had seen parked in the driveway of Mrs. Anderson (R. 18, 19). The agent swore that on two previous occasions he had arrested Clay and had both times found lottery equipment on his person (R. 19).

The affidavit of agent R. E. Lewis recited that Clay, upon several occasions prior to June 21st, had driven a 1955 black Oldsmobile without license plates into the

driveway of the premises designated in the search warrant, and had alighted and carried into the house paper bags of the type and size commonly used by lottery operators; that Clay had a reputation for engaging in the business of accepting wagers for profit, and that he was known in the neighborhood under an alias (R. 16, 17).

In his affidavit, agent W. A. Morris swore that on June 6, 1955, he searched the records of the District Internal Revenue Service in Atlanta and found that neither Clay nor any person named Anderson had obtained a special occupational tax stamp for the fiscal year ending June 30, 1955, required of lottery operators; that, on June 20, 1955, a check of telephone company records showed that in the six preceding months, a number of long distance telephone calls had been made from the house designated in the warrant to known or reputed lottery operators (R. 18).

A fourth affidavit of an agent duBignon was sworn to, not before the Commissioner, but before an agent of the Internal Revenue Service in Atlanta. Dated June 20, 1955, it recited that a check of the Revenue records in Atlanta failed to show that any occupational tax stamp had been purchased by Clay, in his name or under any likely alias, or by any of his known employees (R. 15, 16).

The search warrant itself was on a form and reads in part "Affidavit having been made before me by William A. Pair, William A. Morris and Richard E. Lewis, and an affidavit having been made by F. G. duBignon, that he (has reason to believe) that (on the premises known as) 140 Morton Avenue, Athens,

Georgia, Athens Division in the Middle District of Georgia, (here describe property) there is now being concealed certain property * * *."

ARGUMENT

1. Petitioners' attack on the search warrant centers in part on the fact that the form affidavit was not signed, but instead, in the space provided for setting out the facts, there appeared the words "See Attached Affidavits". The affidavit of each of three officers was subscribed and sworn to by the Commissioner (R. 17, 18, 20). Essentially therefore, petitioners' argument amounts to this: if all three affidavits could have been compressed into the space allowed on the printed form, the warrant would have been in order, but since more space was needed, the documents could not be read together. The lack of merit in the argument is self-evident.

Petitioners also endeavor to attach significance to the fact that the search warrant, after referring to the affidavit of the three officers as made before the commissioner and to the further affidavit of duBignon, then goes on to speak in the singular, *i. e.*, "that he (has reason to believe)." Petitioners argue that this shows that the affidavit of duBignon, who did not appear before the commissioner, was the affidavit principally relied upon. It is evident, however, that the form is printed in the singular and that language changes to the plural were not made in the form. This is hardly sufficient to invalidate a warrant which clearly refers to the affidavits of three persons sworn to before the Commissioner.

2. The court below properly held that, disregarding the duBignon affidavit as not sworn to before the Commissioner, there was adequate showing of probable cause for issuance of the search warrant on the basis of the affidavits of the other three agents. The facts there set forth were sufficient to "warrant a man of reasonable caution in the belief that an offense has been or is being committed"—the test of probable cause laid down by this Court in *Brinegar* v. *United States,* 338 U. S. 160, 175, 176.[1] The only requirement as to the sufficiency of supporting affidavits is that they set forth such facts as are necessary to satisfy the Commissioner that there is probable cause to believe that the grounds for the application exist. *Lowrey* v. *United States,* 161 F. 2d 30 (C. A. 8), certiorari denied, 331 U. S. 849; *Hawkins* v. *United States,* 238 F. 2d 265 (C. A. D. C.), certiorari denied, 353 U. S. 925. Manifestly it is not necessary that the affiant actually see the illegal activity in operation.

There is no merit to petitioners' argument that because the affidavit of Morris, while executed on the date of the warrant, showed that they had not purchased an occupational tax stamp as of June 6, 1955, it did not establish that they were violating a statute at the time the warrant was issued some fifteen days thereafter (Pet. 12–13). The statute here involved requires the special tax to be paid before engaging in the wagering business (see 26 U. S. C. 3290 (1952

[1] While the *Brinegar* case dealt with probable cause to search without a warrant, the Court's discussion of other decisions relating to search warrants (338 U. S. at pp. 174–176, particularly fns. 13 and 15) confirms that the definition there laid down was intended to apply generally to all searches.

ed.); 17 F. R. 6732). There was legally sufficient information before the Commissioner to show that petitioners were engaged in the business on and prior to June 6 and continually up until the time the warrant was issued on June 21, 1955. Particularly in the light of these circumstances, the facts in the Morris affidavit were so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time. See *Sgro* v. *United States*, 287 U. S. 206, 210. In the following cases, lapses of time of between 11 and 21 days, from the date information was secured until the affidavit was made, or the warrant issued, did not invalidate the search warrant or the search. *Nuckols* v. *United States*, 99 F. 2d 353 (C. A. D. C.), certiorari denied, 305 U. S. 626; *United States* v. *Callahan*, 17 F. 2d 937 (D. C. M. D. Pa.); *United States* v. *Fitzmaurice*, 45 F. 2d 133 (C. A. 2); *Hefferman* v. *United States*, 50 F. 2d 554 (C. A. 3).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1957.

U.S. GOVERNMENT PRINTING OFFICE: 1957